Supreme Court, U.S.
FILED
05-844 DEC 23 2005
OFFICE OF THE CLERK

No. _____

IN THE
Supreme Court of the United States

ROBERT L. BRUMFIELD,

Petitioner,

v.

CYNTHIA J. BRUMFIELD,

Respondent.

On Petition for Writ of Certiorari
To The Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

Franklin Hays Byers, II
Counsel of Record
Frank H. Byers, II, Ltd.
3769 N. Woodford St.
P.O. Box 2227
Decatur, IL 62524-2227
Telephone: (217) 875-3301

Questions Presented for Review

Whether a spousal support obligation payable to a former spouse, as created by the laws of Illinois, which cannot be modified, discharged in bankruptcy or terminated by the payer and is enforced by the threat of criminal punishment, forced labor and civil sanctions, is peonage and servitude in violation of the Thirteenth Amendment to the Constitution of the United States of America and is, therefore, null and void.

Whether the laws of Illinois that govern the enforcement of spousal support violate the Thirteenth Amendment to the Constitution of the United States of America and are, therefore, null and void.

Table of Contents

Petition for Writ of Certiorari

Sections	Page(s)
Questions Presented for Review	i
Table of Contents	ii
Table of Authorities	v
Citations to this Case	vi
Opinions Below	1
Statement of Jurisdiction	1-2
Constitution and Statutes Involved	2
Statement of the Nature of the Case	3
Statement of Facts	3-5
Argument	5-14
Conclusion	14

Appendix

Orders on Appeal	Page(s)
A. Denial of the Petition for Leave to Appeal by the Illinois Supreme Court	1a
B. Order of the Appellate Court of Illinois, Fourth District	2a–7a

Trial Court Orders	Page(s)
C. Judgment of Dissolution of Marriage Circuit Court, Sixth Judicial District, Champaign County, Illinois	8a–12a
D. Docket Order of October 14, 2004;	13a

Circuit Court, Sixth Judicial District,
Champaign County, Illinois

Trial Court Pleadings	**Page(s)**
E. Marital Settlement Agreement	14a–31a
F. Petition to Terminate Maintenance, Or in the Alternative, to Modify Maintenance	32a–57a
G. Response to the Petition to Terminate Maintenance, or in the Alternative, to Modify Maintenance	58a–67a
H. Motion for Summary Judgment by Plaintiff	68a–70a
I. Response to the Motion for Summary Judgment and Motion for Summary Judgment by Defendant	71a–75a
J. Response to Respondent's Motion for Summary Judgment	76a–80a

Statutes	**Page(s)**
K. 11 USC § 523	81a-89a
L. 750 ILCS 5/502	90a-91a
M. 750 ILCS 5/504	92a-94a
N. 750 ILCS 5/505.1	95a-96a

O.	750 ILCS 5/507	97a-98a
P.	750 ILCS 5/507.1	99a-101a
Q.	750 ILCS 5/508 (a) and (b)	102a-104a
R.	750 ILCS 5/509	105a
S.	750 ILCS 5/510	106a-109a
T.	750 ILCS 5/511	110a-111a
U.	750 ILCS 5/516	112a
V.	750 ILCS 5/702	113a
W.	750 ILCS 5/705	114a-117a
X.	750 ILCS 5/706.1	118a
Y.	750 ILCS 5/713	119a-121a
Z.	750 ILCS 16/15	122a-124a
AA.	750 ILCS 16/50	125a-127a
BB.	750 ILCS 16/60	128a-129a
CC.	750 ILCS 28/20	130a-134a
DD.	750 ILCS 28/35	135a-138a

Table of Authorities

	Page(s)
Bailey v. *Alabama*, 219 U.S. 219 (1911)	4, 6
Clyatt v. *United States*, 197 U.S. 207 (1905)	4
Robertson v. *Baldwin*, 165 U.S. 275 (1897)	7, 8
U.S. v. *Ballek*, 170 F. 3d 871 (9th Cir. 1999)	8
United States v. *Kozminski*, 487 U.S. 931 (1988)	4
Constitution of the United States, Amendment XIII, Section 1	4
11 USC § 523	11
750 ILCS 5/502	2
750 ILCS 5/504	5, 10
750 ILCS 5/505.1	5
750 ILCS 5/507	5, 6
750 ILCS 5/507.1	5
750 ILCS 5/508 (a) and (b)	5
750 ILCS 5/509	5
750 ILCS 5/510	5
750 ILCS 5/511	5
750 ILCS 5/516	5
750 ILCS 5/702	5
750 ILCS 5/705	5
750 ILCS 5/706.1	5
750 ILCS 5/713	5
750 ILCS 16/15	5
750 ILCS 16/50	5
750 ILCS 16/60	5
750 ILCS 28/20	5
750 ILCS 28/35	5

Citations to this Case

Supreme Court of Illinois, Docket No. 100479, Order denying Petition for Leave to Appeal	216 Ill.2d 681
Appellate Court of Illinois, Fourth District, Docket No. 04-04-0909, order entered March 30, 2005	Unpublished (Ill.Sup.Ct.Rule 23)

Opinions Below

The Supreme Court of Illinois denied the Petition for Leave to Appeal without consideration of the merits of the issues presented by its order dated September 29, 2005.

The Appellate Court of Illinois, Fourth District, held that "Purely monetary obligations, whether based on ordinary commercial contracts or upon a relationship such as marriage or parenthood cannot be equated with peonage or slavery" (Appendix B page 5a). The Appellate Court ruled that spousal support does not violate the Thirteenth Amendment in its order dated March 30, 2005.

Statement of Jurisdiction

This Petition for Writ of Certiorari is timely filed within ninety (90) days of the date of entry of the order by the highest court of Illinois, the Supreme Court of Illinois, denying the Petitioner's Petition for Leave to Appeal on September 29, 2005.

In the Petition to Terminate Maintenance, or in the Alternative, to Modify Maintenance filed by Robert Brumfield in the trial court on June 11, 2004 (Appendix E) and in the Motion for Summary Judgment filed by Robert Brumfield in the trial court on October 12, 2004 (Appendix H), the validity of the statutes of the state of Illinois governing the authorization and awarding of spousal maintenance and the enforcement of spousal maintenance awards were drawn into question on the grounds that they were repugnant to, and a violation of, the Thirteenth Amendment to the Constitution of the United States of America. The trial court ruled against the Petitioner on October 14, 2004 (Appendix D).

Jurisdiction to review the Petition for Writ of Certiorari is conferred upon this Court by 28 U.S.C. § 1257(a). This petition presents an important question of federal law that has not been, but should be, settled by this Court.

Petitioner asserts that 28 U.S.C. § 2403(b) may apply. Notification as required by Rule 29.4(c) has been given to the Attorney General of the State of Illinois.

Constitution and Statutes Involved

I. Constitution of the United States, Amendment XIII, Section 1:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

II. Federal Statute involved: 11 U.S.C. 523 reproduced at Appendix K

III. Illinois Statutes involved reproduced in Appendix L to DD:

750 ILCS 5/502	750 ILCS 5/702
750 ILCS 5/504	750 ILCS 5/705
750 ILCS 5/505.1	750 ILCS 5/706.1
750 ILCS 5/507	750 ILCS 5/713
750 ILCS 5/507.1	750 ILCS 16/15
750 ILCS 5/508 (a) and (b)	750 ILCS 16/50
750 ILCS 5/509	750 ILCS 16/60
750 ILCS 5/510	750 ILCS 28/20
750 ILCS 5/511	750 ILCS 28 /35
750 ILCS 5/516	

Statement of the Nature of the Case

The issues presented by this Petition for Writ of Certiorari are: first, that spousal support, as enacted by the state of Illinois and in the context of this case, is repugnant to, and in violation of, the Thirteenth Amendment to the Constitution of the United States of America; and second, that the enforcement of spousal support by and under the laws of Illinois are repugnant to, and in violation of, the Thirteenth Amendment to the Constitution of the United States of America.

These issues are the principal subject matters raised by the Petitioner in his Petition to Terminate Maintenance or, in the Alternative, Modify Maintenance (Appendix F) and Motion for Summary Judgment (Appendix I) filed in the trial court. In a hearing held in the trial court on October 14, 2004, the trial court denied the relief requested by the Petitioner. A timely filed appeal from the trial court's ruling to the Appellate Court of Illinois, Fourth District, presented the said issues to that court.

The Appellate Court, Fourth District, denied the relief requested by the Petitioner on March 30, 2005. A timely filed Petition for Leave to Appeal to the Supreme Court of Illinois presented the said issues to that court.

The Supreme Court denied the Petition for Leave to Appeal without consideration of the merits of the issues presented on September 29, 2005. This petition timely follows.

Statement of Facts

Cynthia Brumfield (hereinafter called "Cynthia") and Robert Brumfield (hereinafter called "Robert") were married

for slightly more than twenty-one (21) years when they divorced in Illinois (Judgment of Dissolution of Marriage; Appendix C). In their divorce, Robert and Cynthia entered into a Marital Settlement Agreement which provided "that Husband shall pay to Wife the sum of $1,500 per month as and for the maintenance of Wife" (Paragraph 4, Marital Settlement Agreement; Appendix E page 16a). The Marital Settlement Agreement further provides "this agreement is non-modifiable" (Paragraph 51, Marital Settlement Agreement; Appendix E page 30a and 750 ILCS 5/502(f); Appendix L page 91a).

At the time Robert filed the Petition to Terminate Maintenance, the parties had been divorced slightly less than seven (7) years. From the date of the divorce until the filing of the Petition to Terminate Maintenance, Robert paid to Cynthia the sum of $123,000 in spousal support (Appendix F page 45a). Cynthia has a current life expectancy of thirty-five (35) years. Robert has a current life expectancy of twenty-eight and four tenths (28.4) years. If they both live their normal life expectancy, during his lifetime, Robert will have paid to Cynthia an additional sum of $511,500 in spousal support. Upon Robert's death, Cynthia will still own a claim against Robert's estate for spousal support payments due for her then remaining life expectancy which is the sum of $118,500 (Appendix F page 46a). If one adds the sums that Robert has already paid together with the amount to be paid during his lifetime and the claim against his estate, Robert will pay a total of $753,000 in spousal support to Cynthia. That sum is approximately $35,860 for every year that he was married. For every one year that he was married to Cynthia, Robert will have paid two years of spousal support. For a fifty-one (51) year old auto mechanic with a high school education, this is a staggering load.

Robert and Cynthia are the parents of two (2) children, Sonya Leigh Brumfield, born August 22, 1979, and Courtney Nicole Brumfield, born May 26, 1981. Both children of the parties are now married adults, emancipated and self-sustaining (Appendix F page 48a).

Robert and Cynthia have no current relationship except that at one time in the past they were married (Appendix F page 48a).

Argument

Historically, women were once little more than chattel property owned by their husbands. In Illinois, the Rights of the Married Persons Act, 750 ILCS 65/1 *et seq.*, first enacted in 1874, first allowed married women the right to own their own property, to sue or be sued in their own name, and possess and own their own income.

Society has evolved significantly over time. Same sex marriages are a sign of the changing morals of our society. The historical reasons of the infirmity of women and the legal inabilities of the women to care for themselves, contract for themselves, earn for themselves, are not apropos to same sex marriages or today's society. Why should one spouse, same sex or not, become the indentured servant to the other spouse simply because at one time in the past they were married? If adults are equal under the eyes of the law, neither one should be required to support the other and neither one should own the rights to the income and labor of the other.

In this case, the Illinois Appellate Court, Fourth District, opined that "purely monetary obligations, whether based upon ordinary commercial contracts or upon a relationship such as marriage or parenthood can not be equated with

peonage or slavery" (Appendix B page 5a). This statement ignores the fact that spousal support is a private civil obligation owed by one adult, private citizen to another adult, private citizen which is enforced by the criminal laws of Illinois. Secondly, it ignores the opinions issued by this Court in *United States* v. *Kozminski*, 487 U.S. 931 (1988), *Clyatt* v. *United States*, 197 U.S. 207(1905) and *Bailey* v. *Alabama*, 219 U.S. 219 (1911). In these cases, this Court has stated that a civil debt obligation which is enforced by a threat of criminal prosecution violates the Thirteenth Amendment to the Constitution of the United States of America.

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. U.S. Const., amend. XIII, §1.

In *United States* v. *Kozminski*, 487 U.S. 931 (1988) this Court stated at 487 U.S. page 943:

> In *Clyatt* v. *United States*, 197 U.S. 207 (1905), for example, the Court recognized that peonage - a condition in which the victim is coerced by threat of legal sanction to work off a debt to a master - is involuntary servitude under the Thirteenth Amendment. (Citation omitted.) Similarly, in *United States* v. *Reynolds*, 235 U.S. 133 (1914), the Court held that "[c]ompulsion of . . . service by the constant fear of imprisonment under the criminal laws" violated "rights intended to be secured by the Thirteenth Amendment."
>
> ....

> ...[T]he term "involuntary servitude" necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.

Spousal support is established in the Illinois Marriage and Dissolution of Marriage Act under the provisions of 750 ILCS 5/504 (Appendix M).

Non-payment of spousal support is a criminal offense under the Illinois Non-Support Punishment Act, 750 ILCS16/15 (Appendix Z). Non-payment can be either a misdemeanor or a felony based upon the facts and is punishable by incarceration in the same manner as other misdemeanors or felonies. Under the Illinois Non-Support Punishment Act, 750 ILCS16/50 and 60 (Appendix AA and Appendix BB), in addition to other punishment, the Court may also order the payer to seek employment, report to the Department of Unemployment Security for job search services, maintain a diary with listings of his efforts to obtain employment, report to the court periodically and to perform service in a work alternative program.

Non-payment can also be enforced by a contempt petition and other enforcement procedures authorized by the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/505.1, 507, 507.1, 508 (a) and (b), 509, 510, 511, 516, 702, 705, 706.1 and 713 (Appendices N-Y). Payment can be enforced against the payer's employer under the provisions of the Illinois Income Withholding for Support Act, 750 ILCS 28/20 and 28/35 (Appendix CC and Appendix DD). The State of Illinois may force involuntary labor upon a citizen by requiring one to seek employment, to report to the court one's employment efforts, to maintain a diary with listings of one's efforts to obtain employment and requiring

one to report to the Department of Employment Security and/or a Job Training Partnership Act provider to search for job, training or work programs, 750 ILCS 5/505.1 (Appendix N).

The State of Illinois utilizes forced labor, criminal punishment and civil sanctions to ensure this private obligation is paid by one private citizen to another private citizen. Clearly, the State of Illinois is involved in enforcing the spousal support obligation.

In *Bailey* v. *Alabama*, 219 U.S. 219 (1911), this Court stated at 219 U.S. page 244:

> The State may impose involuntary servitude as a punishment for crime, but it may not compel one man to labor for another in payment of a debt, by punishing him as a criminal if he does not perform the service or pay the debt.
>
> ....
>
> But the State could not avail itself of the sanction of the criminal law to supply the compulsion any more than it could use or authorize the use of physical force. "In contemplation of the law the compulsion to such service by the fear of punishment under a criminal statute is more powerful than any guard which the employer could station." *Ex parte Hollman* (S. Car.), 60 S.E. 24.

When one person owns the right to the income and labor of another person a master-servant relationship is created. An award of spousal support under the Illinois Marriage and Dissolution of Marriage Act gives one adult, private citizen the right to the income and labor of another adult, private citizen. The master-of-old owned the right to the income and

labor of her servant along with the corporeal body. However, the master was required to feed, house, clothe and provide medical care for the corporeal body. The will of the master was enforced by the laws of the state. Today's master owns the right to the income and labor of her servant but does not own the corporeal body. She no longer has to provide food, housing, clothing or medical care. The laws of Illinois, however, still ensure that the servant does not evade his obligation to give his income to his master through coercion from the threat of criminal prosecution and civil sanctions.

Robert asserts that it is not significant that he voluntarily entered into the Marital Settlement Agreement. In *Robertson* v. *Baldwin*, 165 U.S. 275 (1897), Justice Harlan stated at 165 U.S. page 300 in his dissent:

> A contract by which one person agreed to become the slave of another would not be respected in any court, nor could it become the foundation of any claim or right, even if it were entered into without constraint being used upon the person who assumed to surrender his liberty and to become the property of another.

While the obligation to pay spousal support to another citizen is a civil debt, for Robert it is an open ended obligation which he cannot modify or escape. Compelling Robert to give his income to Cynthia under the threat of criminal prosecution is clearly peonage as defined by this Court. The question then becomes even though this is involuntary servitude and peonage and is proscribed by the Thirteenth Amendment to the Constitution of the United States, is it nevertheless permissible. Not all conditions of involuntary servitude violate the Thirteenth Amendment.

First, the Thirteenth Amendment by its own terms exempts involuntary servitude which is imposed as a punishment for a crime after conviction.

Second, involuntary servitude which is for the public good has never been considered a violation of the Thirteenth Amendment. Service in the military according to the terms of enlistment never implies slavery or involuntary servitude. Involuntary service rendered to the public pursuant to the requirements of a statute for public service such as jury service or military service also never implies slavery or involuntary servitude. The key difference is service to the public. *Robertson* v. *Baldwin*, 165 U.S. 275, 282 (1897). One adult, however, owning the rights to the income and labor of another adult does not equate with public service.

Third, support of children is also clearly a different matter. The relationship between a parent and a child is more than an ordinary relationship between a debtor and a creditor. The parent is responsible for bringing the child into the world and so assumes the obligation to provide the child with the necessities of life to insure its welfare until it is emancipated and able to provide for itself. Children are not on the same footing as an unsecured creditor which is the status of a former spouse. Children who are too young to care for themselves must be able to count on their parents for material support since the parents are the ones who brought them into the world. *U.S.* v. *Ballek*, 170 F. 3d 871, 874 and 875 (9th Cir. 1999).

These exceptions to the prohibition against servitude and peonage, however, do not allow one private citizen the right to own the income and labor of another private citizen. It is precisely this private citizen ownership which the Thirteenth Amendment was enacted to prevent. An award of spousal support violates the Thirteenth Amendment unless it falls

within a recognized exception. Should one adult, private citizen be forced into servitude and peonage to another adult, private citizen solely because at one point in time in the past they were married even though they now each have equal legal rights, i.e., equal rights to acquire income, to own property, to care for themselves, to advance according to their own initiative, ability and desire to work?

One might say that an attack on spousal support is in attack upon the institution of marriage. The reverse is true. Spousal support is an attack on the very institution of marriage that spawns it. It is reported that fifty percent (50%) of all marriages end in divorce. Virtually every lawyer who has handled marital cases has heard a client say "I'll never marry again" after the divorce is final. The client does not want to risk losing their property or endure the risk of becoming obligated to pay spousal support again.

The reflection of this growing fear of losing one's property and being a peon, an involuntary servant, is that more and more people just live together without getting married. If one reviews the trend of society from the 1950's to present it is readily observed that more and more people are simply living together without marriage each year. The fear of the potential for economic loss from a marriage which statistically has only a 50/50 chance is changing our society.

When two people marry, they do not become one person. They each still have their own separate interests, their own separate desires, their own separate thoughts. In many cases, but not all, they share a common residence. Whether residing together or not, they each retain their own separate legal rights. They each have their own separate right to own property, to have separate income, to seek employment, to travel, to have their own entertainment, their freedom of

speech, their freedom of association and all of the other freedoms enumerated in the Bill of Rights. They have the ability to spend their own earnings, to file separate income tax returns, to incur separate debts, to commit themselves to endeavors without the other spouse. The rights that individuals have do not truncate upon marriage. Indeed, a person remains a separate and distinct person whether married or not. However, many married persons do share a common residence, acquire jointly owned property and incur jointly owned debts.

It is a laudable goal to divide the marital estate, assets and debts, into two equitable portions for divorcing spouses. It is neither a laudable goal nor a practical possibility to try to create two equal persons from divorcing spouses. Each person will have their own individual elements of industry, thrift, perseverance, education, opportunity and luck. These are the same elements each person brought with them to the marriage. If the court or the legislature cannot create two equal persons from divorcing spouses, then why should they have an equal standard of living? Why is either one entitled to a standard of living equal to the one they both enjoyed during their association? Why should the court or the legislature try to impose the burden on one divorcing spouse to insure that the other divorcing spouse enjoys the standard of living equal to that which was enjoyed during the marriage? What inherent, constitutional or moral right does a divorcing spouse have to enjoy that standard of living? The expectation of living with the same standard of living a divorcing spouse enjoyed during the marriage is not based upon a right found in the Constitution of the United of America, nor in any of the amendments thereto. It is not found in the Constitution of the State of Illinois. What authority does the state of Illinois have to pass a law, 750 ILCS 5/504 (Appendix M), which supercedes the Thirteenth

Amendment to the Constitution of the United States of America? Petitioner suggests none.

The institution of marriage is being undermined by the threat of the involuntary servitude created by an award of spousal support. If one were not exposed to that risk, one would be more likely to marry or remarry. Exposure to involuntary servitude which is enforced both by civil sanctions and criminal punishment is a significant factor for social change. This further destruction of the family unit by the fear of involuntary servitude only compounds the existing problem. This social change is not for the betterment of our society.

This Court has not yet taken a position on whether an exception to the prohibition against involuntary servitude shall exist for spousal support. So why should such an exception exist? The historical reason of the inferiority of women is not valid. The claim that it preserves the institution of marriage is not valid. The obligation is not imposed until the marriage is being terminated. Spousal support is not service to the public. Spousal support is not for those below the age of majority. Finally, same sex marriages now require a re-evaluation of the spousal support concept. Any rational basis which once existed is no longer valid.

Spousal support is a detriment to our society. The increasingly stricter laws enforcing it, while appropriate for child support, are catalysts for dramatic social changes in our society. There is no valid reason why spousal support should be exempted from the provision against involuntary servitude and peonage.

Spousal support is non-dischargeable under Section 523 of the Bankruptcy Code, 11 U.S.C. 523 (Appendix K). Thus

for Robert, he has an ongoing civil debt which extends indefinitely throughout his life and beyond. It does not matter whether Robert is destitute, incompetent or physically or mentally unemployable, his obligation continues. This civil debt is non-modifiable, non-dischargeable in bankruptcy and enforceable by coercion from the criminal laws and the civil contempt laws.

Robert's assets can be garnished, attached and sold. His employer can be forced to divert his income. He can be jailed as a sanction for civil contempt or as punishment for the crime of non-payment. Non-payment of each payment as it becomes due constitutes a separate criminal offense.

In this context, the Illinois spousal support obligation and the laws of Illinois governing the enforcement of spousal support violate the Thirteenth Amendment and are null and void, or, if not, meet today's slave, Robert Brumfield, toiling in a land where slavery was once abolished.

Conclusion

For the foregoing reasons, Robert Brumfield, Petitioner, respectfully requests this Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

ROBERT L. BRUMFIELD, Petitioner

BY: FRANK H. BYERS, II, LTD.

FRANK H. BYERS, II, LTD.
3769 N. Woodford St.
Decatur, IL 62526
Telephone: (217) 875-3301

APPENDIX

Appendix A
In the Supreme Court of the State of Illinois

Cynthia J. Brumfield,	) **Appeal from the Appellate**
	) **Court of the Fourth District**
Plaintiff/Appellee,	) **of Ilinois, No. 04-04-0909**
	)
	) **Appeal from the Circuit**
-vs-	) **Court of the Sixth Judicial**
	) **Circuit Court Champaign**
	) **County, Illinois**
Robert L. Brumfield,	) **Honorable Michael Jones,**
	) **Judge Presiding**
Defendant/Appellant.	) **Case No. 97-D-529**

Supreme Court of Illinois
Clerk of the Court
Supreme Court Building
Springfield, IL 62701
(217) 782-2035

Mr. Frank H. Byers, II
3769 N. Woodford St., Ste. 100
P.O. Box 227
Decatur, IL 62524-2227

No. 100479 – Cynthia J. Brumfield, respondent, v. Robert L. Brumfield, petitioner. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

The mandate of this court will issue to the Appellate Court on October 21, 2005.

Appendix B

No. 4-04-0909
In the Appellate Court of Illinois
Fourth District

In re: the Marriage of	)	
	)	
Cynthia J. Brumfield,	)	**Appeal from the Circuit**
Plaintiff/Appellee,	)	**Court of Champaign**
	)	**County No. 97D529**
	)	
and	)	
	)	**Honorable Michael Q. Jones,**
	)	**Judge Presiding**
Robert L. Brumfield,	)	
Defendant/Appellant.	)	

Order

Filed
March 30, 2005
Clerk of the Appellate Court, 4th Dist.

In August, 1997, the trial court dissolved the marriage of plaintiff, Cynthia J. Brumfield, and the defendant, Robert L. Brumfield, and incorporated the parties' marital settlement agreement into the dissolution judgment. In pertinent part, the agreement provided that Robert make monthly payments of $1,500 to Cynthia as maintenance.

In June 2004, Robert filed a petition to terminate or, in the alternative, modify maintenance. Cynthia later filed a motion for summary judgment, and Robert filed a response to Cynthia's motion and a cross-motion for summary

judgment. Following an October 2004 hearing, the trial court granted Cynthia's motion for summary judgment.

Robert appeals, arguing that (1) spousal maintenance obligations violate the thirteenth amendment's prohibition against slavery and involuntary servitude (U.S. Const., amend. XIII) and (2) the trial court erred by determining that the provisions for spousal maintenance contained in the marital settlement agreement are non-modifiable. We disagree and affirm.

I. BACKGROUND

Cynthia and Robert married in 1976. As previously stated, in August 1997, the trial court dissolved the parties' marriage, and they entered into a marital settlement agreement that was incorporated into the dissolution judgment.

Paragraph four of the parties' marital settlement agreement provides, in pertinent part, as follows:

"That [Robert] shall pay to [Cynthia] the sum of $1,500 per month as and for the maintenance [Cynthia]. This maintenance shall be terminated upon [Cynthia's] remarriage, [Cynthia's] death, or [Cynthia] cohabitating with another on a continuing, conjugal basis."

Paragraph 51 of the agreement provides: "This agreement is non-modifiable except for those provisions regarding custody, visitation[,] and child support."

In Robert's June 2004 petition to terminate or, in the alternative, modify maintenance, he alleged the following pertinent facts: (1) he had already paid Cynthia $123,000 in maintenance pursuant to their agreement; (2) if he fulfilled

his life expectancy, he would pay Cynthia an additional $511,500 during his lifetime; (3) if Cynthia fulfilled her life expectancy, she would have a claim for another $118,500 against his estate; and (4) a material change of circumstances had occurred in that Cynthia was earning substantially more than she was when they entered into the agreement. Robert requested that the trial court (1) terminate his maintenance obligation and (2) declare numerous sections of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 through 802 (West 2002))(which provide for the enforcement of maintenance obligations) null and void as creating conditions of involuntary servitude and peonage in violation of the thirteenth amendment (U.S. Const., amend. XIII). Robert also asserted that (1) paragraph 4 of the marital settlement agreement is too remote and unrelated to paragraph 51 to preclude modification of maintenance and (2) paragraph 51 of the agreement in unconscionable. In July 2004, Cynthia filed a response, requesting that the court deny Robert's petition.

In September, 2004, Cynthia filed a motion for summary judgment, and in October 2004, Robert filed a response to Cynthia's motion and a cross-motion for summary judgment.

Following an October 2004 hearing on the parties' summary judgment motions, the trial court found that no genuine issue of material fact existed. Specifically, the court found that the parties had entered into a voluntary agreement that was enforceable. The court granted Cynthia's motion for summary judgment and denied Robert's summary judgment motion.

This appeal followed.

II. ANALYSIS

A. The Thirteenth Amendment

Robert first argues that his obligation to pay maintenance under the terms of the marital settlement agreement constitutes slavery or involuntary servitude in violation of the thirteenth amendment of the United States Constitution (U.S. Const., amend XIII). We disagree.

The thirteenth amendment to the Constitution provides as follows: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const., amend. XIII.

In *In re Marriage of Smith*, 77 Ill.App.3d 858, 863-64, 396 N.E.2d 859, 864 (1979), the Second District rejected an ex-husband's claim that requiring him to support his ex-wife was a form of "peonage" that violated the thirteenth amendment. In so doing, the court wrote as follows: "This argument is completely without merit. Purely monetary obligations, whether based on ordinary commercial contracts or upon a relationship such as marriage or parenthood cannot be equated with peonage or slavery." *Smith*, 77 Ill.App.3d at 864, 396 N.E.2d at 864.

We fully agree with the Second District and thus reject Robert's argument that spousal maintenance obligations or the enforcement thereof violate the thirteenth amendment's prohibition against involuntary servitude.

B. The Marital Settlement Agreement

Robert also argues that the trial court erred by determining that his maintenance obligation is not

modifiable. Specifically, he contends that (1) paragraph four of the marital settlement agreement, which addresses maintenance, does not contain any language precluding modification; and (2) paragraph 51, which precludes modification of all provisions of the agreement barring custody, visitation and child support, is unconscionable. We disagree.

We review *de novo* a trial court's ruling on summary judgment. Summary judgment is proper when the pleadings, depositions and other matters on file establish that (1) no genuine issue of material fact exists and (2) the moving party is entitled to judgment as a matter of law. *In re Marriage of Colangelo & Sebela*, ___ Ill.App.3d ____, ____, 822 N.E.2d 571, 579 (2005).

Robert concedes that under this court's decision in *In re Marriage of Schweitzer*, 289 Ill.App.3d 425, 682 N.E.2d 759 (1997), his maintenance obligation is non-modifiable. However, he urges us to overrule that decision. In *Schweitzer*, the provisions of the settlement agreement addressing the details of the maintenance award appeared in article II, paragraphs one through three. Article XV, paragraph eight of the agreement stated, "This Marital Settlement Agreement shall not be modifiable." *Schweitzer*, 289 Ill.App.3d at 427, 682 N.E.2d at 760.

When the ex-husband filed a petition to modify maintenance, the trial court dismissed the petition, upon finding that maintenance was not modifiable under the terms of the agreement. *Schweitzer*, 289 Ill.App.3d at 427, 682 N.E.2d at 750. On appeal, the ex-husband argued that "had the parties intended to preclude modification of maintenance, they would have included such a provision in article II of the [a]greement, the section dealing with maintenance."

Schweitzer, 289 Ill.App.3d at 418, 682 N.E.2d at 761. We rejected that argument and explained as follows:

> "Taken to its logical conclusion, [the ex-husband's] argument would mean that, in order to preclude modification of all provisions of the [a]greement, it would be necessary for the parties to expressly state in each article of the [a]greement that the particular provision was non-modifiable. Such a requirement would be superfluous." *Schweitzer*, 289 Ill.App.3d at 429, 682 N.E.2d at 761.

We further noted that the trial court had found that there was no ambiguity in the language of the agreement and it sufficiently expressed the parties' intention that the maintenance provisions were not to be modified. *Schweitzer*, 289 Ill.App.3d at 429, 682 N.E.2d at 761.

We adhere to *Schweitzer*, which controls our decision in this case. Here, as in *Schweitzer*, the maintenance provision appears in one part of the agreement, and a non-modification clause appears elsewhere. In both cases, the language used was unambiguous. We thus conclude that the trial court did not err by (1) finding that Robert's maintenance obligation is non-modifiable or (2) granting Cynthia's motion for summary judgment.

III. CONCLUSION

For the reasons states, we affirm the trial court's judgment.

Affirmed.

Steigmann, J., with Turner and Appleton, JJ., concurring.

Appendix C

In the Circuit Court for the Sixth Judicial Circuit
Champaign County, Illinois

In re: the Marriage of	)	
	)	
Cynthia J. Brumfield,	)	
	)	
Petitioner,	)	
	)	**No. 97-D-529**
vs.	)	
	)	
Robert L. Brumfield,	)	
	)	
Respondent.	)	

JUDGMENT FOR DISSOLUTION OF MARRIAGE

Filed
Sixth Judicial Circuit
August 29, 1997
Linda S. Frank
Clerk of the Circuit Court
Champaign County, Illinois

Now on this 29th day of August, 1997, the same being one of the regular judicial days of the above court, said court being fully convened and in regular session, the following proceedings were had and entered of record:

In the above-entitled cause comes the petitioner, Cynthia J. Brumfield, personally present and by her attorney, Stephen R. Frank, and the respondent, Robert Lee Brumfield, appearing by and through his attorney, Glenn Stanko, due notice having been given, and the court having heard the

evidence presented, reviewed the Marital Settlement Agreement, and the court being fully advised in the premises,

Wherefore, the court finds:

1. That the court has jurisdiction of the subject matter herein and the parties hereto and that petitioner was domiciled in this state and this domicile has been maintained for at least 90 days preceding the filing of the petition.

2. That the parties were married on May 22, 1976, in Mahomet, Champaign County, Illinois, and the marriage is registered in Champaign County, Illinois.

3. That the jurisdictional requirements of 750 ILCS 5/401 exist and that there exist the grounds for the dissolution of this marriage.

4. That irreconcilable differences have caused an irretrievable breakdown of this marriage and further attempts at reconciliation would not be fruitful or in the best interests of the parties. The parties have filed with the court their stipulation to waive the two-year period of separation.

5. That two children were born of this marriage, no children were adopted by the parties, and the petitioner is not now pregnant.

6. That the children born to the parties are Sonya Leigh Brumfield, date of birth 8/22/79, and Courtney Nicole Brumfield, date of birth 5/26/81.

7. That petitioner is a fit and proper person to have the permanent care, custody, control and education of the parties' minor children, Sonya Leigh Brumfield and Courtney Nicole Brumfield.

8. That it is in the parties' minor children's best interests that their permanent care, custody, control and education be awarded to petitioner subject to the respondent's right of reasonable visitation.

9. That the parties have entered into a written Marital Settlement Agreement dated July 30, 1997, as to all ancillary matters, attached hereto as Exhibit "a" which is fair and reasonable, is not unconscionable, and which should be adopted by the court.

10. That respondent has waived maintenance and he should not receive maintenance from the petitioner.

11. That petitioner shall receive child support and maintenance from the respondent in an amount and manner as stated in the parties' Marital Settlement Agreement dated July 30, 1997, which is attached hereto and made a part hereof.

12. That the petitioner is 40 years of age and respondent is 43 years of age, both are presently employed or employable, and petitioner has resided in the state of Illinois for more than 90 days.

Therefore, it is ordered:

A. The bonds of matrimony heretofore existing between the petitioner, Cynthia J. Brumfield, and the respondent, Robert Lee Brumfield, be and the same are hereby dissolved and the marriage contract between the parties is hereby declared to be terminated and a Judgment of Dissolution of Marriage is entered.

B. That the written Marital Settlement Agreement of the parties dated July 30, 1997, is hereby approved and incorporated into this judgment by reference to each of its terms, the said agreement is adopted by the court as a court order, and each term thereof is given full force and effect as an order of this court, and the parties are ordered to comply with the terms of the aforesaid Marital Settlement Agreement.

C. That the permanent care, custody, control and education of the parties' minor children, Sonya Leigh Brumfield and Courtney Nicole Brumfield, is awarded to petitioner subject to the reasonable visitation by respondent.

D. That respondent is forever barred from receiving maintenance from the petitioner.

E. That the petitioner is to receive child support and maintenance from the respondent in an amount and manner as stated in the parties' Marital Settlement Agreement as attached hereto as Exhibit "A".

F. That the court retains jurisdiction of the parties herein for purposes of enforcement of this judgment.

Dated: 8/29/97 /s/ Arnold F. Blockman
Judge

Approved as to form:

/s/ Stephen R. Frank
Stephen R. Frank, Attorney for petitioner

/s/ Glen Stanko
Glen Stanko, Attorney for respondent

Appendix D

In the Circuit Court for the Sixth Judicial Circuit
Champaign County, Illinois

In re: the Marriage of	)	
	)	
Cynthia J. Brumfield,	)	
	)	
Petitioner,	)	
	)	**No. 97-D-529**
vs.	)	
	)	
Robert L. Brumfield,	)	
	)	
Respondent.	)	

DOCKET ORDER OF OCTOBER 14, 2004

Appearance of the petitioner personally and with B. Frederick. Appearance of the respondent personally and with Mr. Byers. Cause called for hearing on plaintiff's Motion for Summary Judgment. Arguments of counsel heard. Plaintiff's Motion for Summary Judgment is granted. Cause called for hearing on Respondent's Motion for Summary Judgment. Arguments of counsel heard. Respondent's Motion for Summary Judgment is denied. Court articulates ruling for the record. In view of court's ruling, Petition to Terminate Maintenance or in the Alternative Modify Maintenance filed 6/11/04 is denied. Court finds no just reason to delay enforcement or appeal. No written order required.

Appendix E

In the Circuit Court for the Sixth Judicial Circuit
Champaign County, Illinois

In re: the Marriage of	)	
	)	
Cynthia J. Brumfield,	)	
	)	
Petitioner,	)	
	)	**No. 97-D-529**
vs.	)	
	)	
Robert L. Brumfield,	)	
	)	
Respondent.	)	

MARITAL SETTLEMENT AGREEMENT

Filed
Sixth Judicial Circuit
August 29, 1997
Linda S. Frank
Clerk of the Circuit Court
Champaign County, Illinois

This agreement made and entered into this 30th day of July, 1997, in Urbana, Illinois, by and between Robert Lee Brumfield, hereinafter called "Husband", and Cynthia J. Brumfield, hereinafter called "Wife".

Whereas, the Wife has filed or is about to file a suit for dissolution of marriage now in consideration or soon to be considered in the Circuit Court of Champaign County, Illinois, and the parties consider it to be in their best interests to settle between themselves all questions of custody,

maintenance, support, visitation, debts and rights to property of the parties and all other rights arising out of the marital or any other relationship now or previously existing between them.

Both parties acknowledge that each has been fully informed of the wealth, estate and income of the other and has been fully informed of his or her respective rights therein and are desirous of entering into an agreement settling all property rights, real, personal and inchoate, and also any and all other claims which each may have against the other.

Now in consideration of the mutual covenants, the parties agree that should a final judgment of dissolution of marriage be awarded, that this Marital Settlement Agreement shall be incorporated therein as a full and complete settlement of all rights between the parties.

The parties hereto agree:

1. That the agreement is not one to obtain or stimulate a dissolution and both parties reserve the right to prosecute an action for dissolution which either of them may hereafter commence, and defend any action which either may hereafter commence.

2. That each party to this agreement is to keep his or her own clothing and personal effects, receipt of which is hereby acknowledged.

3. That Husband is employed or employable and he waives maintenance from the Wife and he understands that he will be forever barred from receiving maintenance from the Wife.

4. That Husband shall pay to Wife the sum of $1,500.00 per month as and for the maintenance of Wife. This maintenance shall be terminated upon Wife's remarriage, Wife's death, or Wife cohabitating with another on a continuing, conjugal basis.

5. That two children were born of this marriage, namely Sonya Leigh Brumfield, age 17, and Courtney Nicole Brumfield, age 16, no children were adopted of this marriage, and the Wife is not now pregnant.

6. That Wife is a fit and proper person to have custody of said minor children, Sonya Leigh Brumfield and Courtney Nicole Brumfield, and both Husband and Wife have agreed that the permanent care, custody, control and education of the said minor children of the parties shall be awarded to Wife subject to the right of reasonable visitation in Husband.

7. That Husband shall pay to Wife through the office of the Circuit Clerk of Champaign County, Illinois, the sum of $1,000.00 per month as and for child support. That the monthly child support in the amount of $1,000.00 shall terminate upon the youngest child of the parties reaching her 18th birthday or upon her graduation from high school, whichever shall last occur. An active Order for Withholding shall be entered.

8. That Husband shall pay the yearly Clerk's fee as a separate obligation.

9. That an active Order for Withholding shall be entered but Husband is responsible for all payments not made by his employer.

10. That Husband shall pay for and provide full coverage medical and dental insurance for the minor children of the parties until they attain the age of 24 years if they are full-time students at that time and completing educational requirements for an advanced degree.

11. That Husband shall pay all co-pays and any uninsured medical, dental, optical orthodontic and prescription expenses of the children of the parties and hold the Wife harmless from the payment of same. Said obligation shall continued for whatever period of time the Husband is required to provide medical and dental insurance for the children.

12. That Husband shall continue to pay for and provide the following unencumbered life insurance policies on his life, namely State Farm Insurance Policy No. 1126-8299 in the face amount of $50,000; State Farm Insurance Policy No. 0802-7028 in the face amount of $79,000; State Farm Insurance Policy No. 0589-2917 in the face amount of $29,000; and Pekin Insurance Policy No. 1659280 in the face amount of $250,000, with the two children of the parties as sole beneficiaries until they both attain 24 years of age or have completed their college education, whichever occurs first. Wife shall be the Trustee of the policy benefits until said children attain 18 years of age.

13. That Husband shall not borrow against said life insurance policies and he shall provide Wife with proof on a yearly basis that the policies are in existence and paid for.

14. That Wife shall have the federal and state income tax dependency exemptions for the parties' two minor children.

15. That it is the intent of the parties that the minor children of the parties attain post high school education or training. It is further contemplated that the post high school education shall include a masters or a professional degree for each of the minor children of the parties. Husband agrees that he shall be solely responsible for all education expenses for both minor children which shall include but not be limited to tuition, fees, books and housing. That the parties agree that the minor children shall apply for any non-reimbursable grants or scholarships for which they may qualify but that the minor children are not required to obtain any loans for said education which will require their repayment. Husband may in his sole discretion apply for and receive certain loans to finance the educational expenses but he shall be solely responsible for the repayment of the same and hold the Wife harmless for the payment of same.

    Husband further agrees that his obligation to provide the minor children with the advanced degree educational expenses shall continue even if the children were to marry prior to their completing said education. At this time, it is specifically contemplated that the eldest child

shall undertake a course of study in occupational therapy which will entail a six-year court of study ending in a Master of Science degree. That the Husband further agrees that based on the availability of courses and the length of time involved in the educational process, that the minor children may require additional time over and above the six-year period to complete said education and provided they are making reasonable progress, Husband's obligation shall continued until the degree contemplated is obtained or the child's 25th birthday, whichever shall first occur.

That the parties further agree that should the minor child marry during the educational process, that the Husband shall continue to pay all tuition, fees and books but shall be relieved of the obligation to provide housing for said child.

16. That the Husband agrees that so long as the minor children of the parties are full-time students completing their advanced education that he shall, in addition all educational expenses, provide each of the children automobile maintenance at his sole expense and automobile insurance at his sole expense until they have completed said educational requirements or attain the age of 24 years, whichever shall first occur.

17. That the Husband shall receive the marital home located at 2529 County Road 450E, Mahomet, Illinois, and legally described as:

The South ½ of the southeast ¼ of the Northeast ¼ of the Southwest ¼ and the

South ½ of the Southwest ¼ of the Northeast ¼ of the Southwest ¼, all in Section 26, Township 21 North, Range 7 East of the Third Principal Meridian, situated in Champaign County, Illinois, except that part described as follows: Beginning at a point on the East line of the Southwest ¼ of Section 26, Township 21 North, Range 7 East of the Third Principal Meridian, ly8ing 60.00 feet North of the Southeast corner of the Northeast ¼ of the Southwest ¼ of said Section 26; thence West 312.00 feet parallel to the South line of said Northeast ¼ of the Southwest ¼; thence North 140.00 feet parallel to the East line of said Southwest ¼; thence East 312.00 feet parallel to the Southwest ¼ to a point on the East line of said Southwest ¼; thence South 140.00 feet on said East line to the point of beginning, situated in Champaign County, Illinois.

as his sole property and Wife shall give up all of her interest in same. That the parties place an approximate value on said real estate in the amount of $200,000 and the property is encumbered with an existing first mortgage in the amount of $63,000. That the Husband shall assume and agrees to pay the existing first mortgage at BankIllinois and any and all other expenses attributable to said property and shall hold the Wife harmless from the same. That the Wife shall quit claim said real estate to Husband upon entry of the Judgment of Dissolution of Marriage.

18. That the Wife shall receive the Florida real estate legally described as:

> Lot 9, Block 368, Deltona Lakes, Unit Nine, according to the map or plat thereof, as recorded in May Book 25, page(s) 178 through 185, of the Public Records of Volusia County, Florida.

as her sole and separate property and Husband shall give up all interest in the same. Husband shall quit claim said real estate to Wife upon the entry of a Judgment of Dissolution of Marriage. Husband warrants there are no liens or outstanding taxes owed on said real estate except current year's real estate taxes which Wife shall assume and agrees to pay.

19. Wife shall receive as her sole property all sums contained in Busey Bank savings account #23-254-808 in the approximate amount of $46,000.00 and Husband shall give up any and all interest in the same.

20. That Husband has in his sole name a certain AG Edwards stock trading account which contains the sum of $20,539.57. That Husband agrees to liquidate said account and shall pay Wife the sum of $17,000.00 in cash on the date of entry of a Judgment of Dissolution of Marriage and the further sum of $3,539.57 in cash within 30 days of the date of the entry of a Judgment of Dissolution of Marriage. Husband further gives up all interest in said funds and the same shall be the sole and separate property of the Wife.

21. That Wife waives and gives up any interest in the Husband's Putnam Investments SEP-IRA Plan #B-143325507500BBU in the approximate amount of $41,249.33, State Farm Flexible Premium Annuity-IRA #0802-6996 in the approximate amount of $5,065.63, State Farm Single Premium Deferred Annuity-IRA #0828-3779 in the approximate amount of $7,171.58, and any other pension or retirement programs or benefits, if any, and the same shall be the sole property of the Husband.

22. That the Wife shall receive as her sole and separate property all right, title and interest in a certain life insurance policy from State Farm Insurance #1171-5729 in the face amount of $50,000 and any cash value therein and Husband gives up any and all interest in the same.

23. That Husband waives and gives up any interest in the Wife's pension, profit-sharing and retirement programs, or other benefits, if any, and such shall be the sole property of Wife as the sole owner.

24. That the Husband shall receive as his sole and separate property the motor vehicle now in his possession and the Wife gives up any interest in the same. Husband shall pay the outstanding balance on said vehicle, if any, and hold the Wife harmless from payment of the same.

25. That Wife shall receive the motor vehicle now in her possession as her own sole property and Husband gives up all interest in the same. Wife shall pay the outstanding balance on said vehicle,

if any, and hold the Husband harmless for payment of the same.

26. That the Husband shall receive as his sole and separate property all right, title and interest in a certain sole proprietorship known as "The Brake Shop, Champaign, Illinois". That Husband's interest shall include any and all equipment, accounts receivable, bank accounts, or other assets of said business as his sole and separate property and Wife shall give up any and all interest in the same. Further, Husband shall assume and hold Wife harmless from any and all liabilities regarding said business, including but not limited to notes payable, taxes, and long-term debt of said business.

    Husband shall also receive as his sole and separate property, the real estate attributable to said business and more fully described as follows. (See Exhibit "A" attached hereto and made a part hereof.) Husband shall receive said real estate subject to any existing mortgages thereon to Busey Bank or any other lending institutions and shall hold the Wife harmless from the same. Wife shall quit claim her interest in said real estate to Husband at the request of Husband after the entry of the Judgment of Dissolution of Marriage.

27. That the parties have currently contracted to purchase certain real estate commonly known as 106 Timberview, Mahomet, Illinois for the sum of $91,500 under a residential sales contract dated June 21, 1997. Husband agrees that as a further equalization of the property settlement that he

shall purchase said real estate for the Wife in the following manner: Husband shall borrow the sum of $91,500 encumbering any property he desires which he receives pursuant to this property settlement agreement. Husband shall then complete the purchase of said residential sales contract in cash with the property to be conveyed in the Wife as her sole and separate property with the Husband giving up any interest in the same. Husband further agrees to pay as his sole and separate obligation, any closing costs, attorney's fees, title insurance, or recording fees necessary to convey said real estate free and clear to the Wife. Husband further agrees to reimburse the Wife for any tax credits or prorations received pursuant to the closing so that the Wife can pay the same when they become due and payable.

28. That the parties have previously split all of their tangible and intangible personal property. Husband shall receive all of the tangible and intangible personal property in his present possession and control as his own sole property and Wife gives up all interest in same.

29. That Wife shall receive all of the tangible and intangible personal property in her present possession as her own sole property and Husband gives up all interest in same.

30. That the parties have previously split their tangible personal property to their satisfaction. Husband shall receive all personal property in his present possession to the exclusion of Wife. Wife shall receive all personal property in her present possession to the exclusion of Husband.

31. That this agreement is fair and equitable and should be adopted by the court.

32. That Husband and Wife both acknowledge that they are adults, have no questions about this agreement, and state that they are not under the influence of alcohol, drugs, or under any mental or emotional strain or disability or any kind of duress of any kind at the time they are signing this agreement.

33. That both Husband and Wife are relying on their own knowledge and believe this agreement to be fair and equitable.

34. That the Husband and Wife hereby acknowledge that each has fully and completely disclosed to the other all facts concerning the property holdings of each, including marital and non-marital property and that each fully and completely understands the property holdings of the other.

35. That the parties agree to execute any and all instruments and documents required to effect the foregoing division of their property. In the event either fails or refuses to so execute any instruments, the Sheriff of Champaign County is hereby authorized to execute the same on their behalf.

36. This agreement shall be binding upon the heirs, executors, administrators and assigns of both parties.

37. That Stephen R. Frank represents only Wife in this dissolution proceeding and Glenn Stanko represents only Husband.

38. Disclosure. Husband and Wife agree that full disclosure of all assets and liabilities is a material element in this Marital Settlement Agreement. The failure of either Husband or Wife to fully disclose all information concerning assets and liabilities at the time of this agreement will render this agreement null and void and of no force and effect. Both parties represent to each other that they have made full disclosure, in writing.

39. This agreement is not one to obtain or stimulate a dissolution of marriage.

40. This agreement contains the entire understanding of the parties. There are no representations, warranties, covenants or undertakings other than those as expressly set forth herein.

41. A modification or waiver of any of the provisions of this agreement shall be effective when and only if made in writing and executed with the same formality as this agreement. The failure of either party to insist upon strict performance of any of the provisions of this agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

42. The parties acknowledge that each has been advised by their respective counsel of each parties' right to obtain and take advantage of the panoply of discovery tools available to litigants in a court proceeding, including but not limited to,

interrogatories, depositions, requests to produce, an examination of the books and records of the other party, and the procurement of independent evaluations of the assets possessed and/or controlled by the other, prior to the execution of this agreement. Each party represents and agrees that he or she is sufficiently familiar with the income and assets of the other and hereby knowingly waives his or her right tot utilize the foregoing discovery tools for the purpose of settling their differences concerning the issues arising out of the marriage.

43. The parties acknowledge that the settlement reflected in this agreement represents a compromise and a negotiated settlement and that each has actively participated, with the assistance of counsel, in the preparation of this agreement.

44. The parties acknowledge that each has been informed by their respective counsel of the right to have a court of competent jurisdiction determine all issues arising from the marriage. Each party voluntarily and knowingly waives that right and accepts the terms of this agreement as being final, complete and binding as to all said issues arising from the marriage.

45. Each party acknowledges that he or she has read and reviewed this agreement in its entirety, with their respective counsel, prior to signing.

46. This agreement may be offered into evidence by either party in any action or proceedings of any nature in which the same may be material or relevant.

47. Should any provision of this agreement be held invalid or unenforceable by any court of competent jurisdiction, all other provisions shall nonetheless continue in full force and effect.

48. The parties represent and acknowledge that there have been no collusive agreements whatsoever made either orally or in writing, or any representations made by one party to the other with respect to the procurement of a divorce, or with respect to restraining or inhibiting the other from contesting or litigating any pending or future matrimonial cause of action for divorce, enforcement proceedings, or compliance application, incident to the enforcement of the terms of this agreement.

49. To the fullest extent by law permitted to do so, and except as herein otherwise provided, each of the parties does forever relinquish, release, waive and forever, quitclaim and grant to the other, his or her heirs, personal representatives and assigns, all rights of maintenance, alimony, dower, inheritance, descent, distribution, community interest, and all other right, title, claim, interest and estate as Husband and Wife, widow or widower, or otherwise, by reason of the marital relation existing between said parties hereto, under any present or future law, or which he or she otherwise has or might have or be entitled to claim in, to or against the property and assets of the other, real, personal or mixed, as beneficiary or owner of any insurance policy or benefits of the other, or his or her estate, whether now owned or hereafter in any manner acquired by the other

party, or whether in possession or in expectancy, and whether vested or contingent and each party further covenants and agrees for himself or herself, his or her heirs, personal representatives and assigns, that neither of them will at any time hereafter sue the other, or his or her heirs, personal representatives and assigns, for the purpose of enforcing any or all of the rights relinquished under this agreement; and each of the parties agree that in the event any suit shall be commenced, this release, when pleaded, shall be and constituted a complete defense to any such claim or suit so instituted by either party hereto; and each of the parties further agree to execute, acknowledge and deliver at the request of the other party, his or her heirs, personal representatives, grantees, devisees or assigns, any or all such deeds, releases or other instruments and further assurances as may be required or reasonably required to effect or evidence such release, waiver, relinquishment or extinguishment of such rights; provided, however, that nothing herein contained shall operated or be construed as a waiver or release by either party to the other of the obligation on the part of the other to comply with provisions of this agreement, or the rights of either party under this agreement.

50. Except as otherwise provided herein, each party in the event of dissolution, does hereby forever relinquish, release, waive and quitclaim to the other all rights of dower and homestead and all other property rights and claims which he or she now has or may hereafter have by reason of the marital relationship, including the right to any "marital property" and any tangible and

intangible assets of the other as defined in Section 503 of the Illinois Marriage and Dissolution of Marriage Act as effective October 1, 1997.

51. This agreement is non-modifiable except for those provisions regarding custody, visitation and child support.

52. In the event either party at any time hereafter obtains a dissolution within one year from the date of this agreement, they shall incorporate all of its provisions into the Judgment of Dissolution.

In witness whereof, the parties hereto have affixed their signatures this 30th day of July, 1997.

/s/ Robert L. Brumfield
Robert Lee Brumfield, Husband

/s/ Cynthia J. Brumfield
Cynthia J. Brumfield, Wife

State of Illinois)
) ss.
County of Champaign)

I, the undersigned, a Notary Public in and for said county and state aforesaid, do hereby certify, that this day Robert Lee Brumfield, referred to as "Husband" and whose name is subscribed to the foregoing Marital Settlement Agreement, appeared before me and acknowledged that he signed said instrument as his free and voluntary act.

Given my hand and Notarial Seal this 31st day of July, 1997.

/s/ Edward H. Rawles
Notary Public

Official Seal
Edward J. Rawles
Notary Public, State of Illinois
My Commission Expires: 12/9/98

State of Illinois)
) ss.
County of Champaign)

I, the undersigned, a Notary Public in and for said county and state aforesaid, do hereby certify that this day Cynthia J. Brumfield, referred to as "Wife" and whose name is subscribed to the foregoing Marital Settlement Agreement, appeared before me and acknowledged that she signed said instrument as her free and voluntary act.

Given my hand and Notarial Seal this 30th day of July, 1997.

/s/ Annette L. Martin
Notary Public

Official Seal
Annette L. Martin
Notary Public, State of Illinois
My Commission Expires: 5/6/2001

Appendix F

In the Circuit Court for the Sixth Judicial Circuit
Champaign County, Illinois

In re: the Marriage of	)	
	)	
Cynthia J. Brumfield,	)	
Petitioner,	)	
	)	**No. 97-D-529**
vs.	)	
	)	
Robert L. Brumfield,	)	
Respondent.	)	

PETITION TO TERMINATE MAINTENANCE OR, IN THE ALTERNATIVE, TO MODIFY MAINTENANCE

Filed
Sixth Judicial Circuit
June 11, 2004
Linda S. Frank
Clerk of the Circuit Court
Champaign County, Illinois

Robert Lee Brumfield, Defendant, by Frank H. Byers, II, Ltd., his attorneys, for his Petition to Terminate Maintenance or, in the Alternative, to Modify Maintenance states:

1. That a Judgment of Dissolution of Marriage was entered in this cause on August 29, 1997 all of which is more particularly shown by the records of the Clerk of this Court.

2. That the Judgment of Dissolution of Marriage states in subparagraph B that:

> That the written Marital Settlement Agreement of the parties dated July 30, 1997, is hereby approved and incorporated into this Judgment by reference to each of its terms, the said agreement is adopted by the court as a court order, and each term thereof is given full force and effect as an order of this court, and the parties are ordered to comply with the terms of the aforesaid Marital Settlement Agreement.

3. That the Judgment of Dissolution of Marriage states in subparagraph E that:

> That the Petitioner is to receive child support and maintenance from the Respondent in an amount and manner as stated in the parties' Marital Settlement Agreement attached hereto as Exhibit "A".

4. That the Marital Settlement Agreement entered into by the parties dated July 30, 1997, provided in paragraph 4:

> That Husband shall pay to Wife the sum of $1,500 per month as and for the maintenance of Wife. This maintenance shall be terminated upon Wife's remarriage, Wife's death, or Wife cohabitating with another on a continuing, conjugal basis.

5. The said Marital Settlement Agreement further contains the following pertinent provisions:

> Paragraph 31: "That this agreement is fair and equitable and should be adopted by the Court."
>
> Paragraph 32: "That Husband and Wife both acknowledge that they are adults, have no questions about this agreement, and state that they are not under the influence of alcohol, drugs, or under any mental or emotional strain or disability or any kind of duress of any kind at the time they are signing this agreement.
>
> Paragraph 33: "That both Husband and Wife are relying on their own knowledge and believe this agreement to be fair and equitable."
>
> Paragraph 34: "That the Husband and Wife hereby acknowledge that each has fully and completely disclosed to the other all facts concerning the property holdings of each, including marital and non-marital property and that each fully and completely understands the property holdings of the other."
>
> Paragraph 36: "This agreement shall be binding upon the heirs, executors, administrators and assigns of both parties."
>
> Paragraph 38: "Disclosure. Husband and Wife agree that full disclosure of all

assets and liabilities is a material element in this Marital Settlement Agreement. The failure of either Husband or Wife to fully disclose all information concerning assets and liabilities at the time of this agreement will render this agreement null and void and of no force and effect. Both parties represent to each other that they have made full disclosure, in writing."

Paragraph 40: "This agreement contains the entire understanding of the parties. There are no representations, warranties, covenants or undertakings other than those as expressly set forth herein."

Paragraph 42: "The parties acknowledge that each has been advised by their respective counsel of each parties' right to obtain and take advantage of the panoply of discovery tools available to litigants in a court proceeding, including but not limited to, interrogatories, depositions, requests to produce, an examination of the books and records of the other party, and the procurement of independent evaluations of the assets possessed and/or controlled by the other, prior to the execution of this agreement. Each party represents and agrees that he or she is sufficiently familiar with the income and assets of the other and hereby knowingly waives his or her right to utilize the foregoing discovery tools for the purpose of settling their differences

concerning the issues arising out of the marriage."

Paragraph 43: "The parties acknowledge that the settlement reflected in this agreement represents a compromise and a negotiated settlement and that each has actively participated, with the assistance of counsel, in the preparation of this agreement."

Paragraph 44: "The parties acknowledge that each has been informed by their respective counsel of the right to have a court of competent jurisdiction determine all issues arising from the marriage. Each party voluntarily and knowingly waives that right and accepts the terms of this agreement as being final, complete and binding as to all said issues arising from the marriage."

Paragraph 45: "Each party acknowledges that he or she has read and reviewed this agreement in its entirety, with their respective counsel, prior to signing."

Paragraph 47: "Should any provisions of this agreement be held invalid or unenforceable by any court or competent jurisdiction, all other provisions shall nonetheless continue in full force and effect."

Paragraph 48: "The parties represent and acknowledge that there have been no collusive agreements whatsoever made either orally or in writing, or any representations made by one party to the other with respect to the procurement of a divorce, or with respect to restraining or inhibiting the other from contesting or litigating any pending or future matrimonial cause of action for divorce, enforcement proceedings, or compliance application, incident to the enforcement of the terms of this agreement."

6. The said marital agreement further provides in paragraph 51:

> This agreement is non-modifiable except for those provisions regarding custody, visitation and child support.

7. 750 ILCS 5/502 provides:

> (a) To promote amicable settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into a written or oral agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them and support, custody and visitation of their children.
>
> (b) The terms of the agreement, except those providing for the support, custody and visitation of children, are binding

upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable.

(c) If the court finds the agreement unconscionable, it may request the parties to submit a revised agreement or upon hearing, may make orders for the disposition of property, maintenance, child support and other matters.

(d) Unless the agreement provides to the contrary, its terms shall be set forth in the judgment, and the parties shall be ordered to perform under such terms, or if the agreement provides that its terms shall not be set forth in the judgment, the judgment shall identify the agreement and state that the court has approved its terms.

(e) Terms of the agreement set forth in the judgment are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(f) Except for terms concerning the support, custody or visitation of children, the judgment may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth

in the judgment are automatically modified by modification of the judgment.

8. 750 ILCS 5/504 provides:

> (a) In a proceeding for dissolution of marriage or legal separation or declaration of invalidity of marriage, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for fixed or indefinite periods of time, and the maintenance may be paid from the income or property of the other spouse after consideration of all relevant factors, including: (1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance; (2) the needs of each party; (3) the present and future earning capacity of each party; (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage; (5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is

able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment; (6) the standard of living established during the marriage; (7) the duration of the marriage; (8) the age and the physical and emotional condition of both parties; (9) the tax consequences of the property division upon the respective economic circumstances of the parties; (10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse; (11) any valid agreement of the parties; and (12) any other factor that the court expressly finds to be just and equitable.

(b) (Blank).

(c) The court may grant and enforce the payment of maintenance during the pendency of an appeal as the court shall deem reasonable and proper.

(d) No maintenance shall accrue during the period in which a party is imprisoned for failure to comply with the court's order for the payment of such maintenance.

(e) When maintenance is to be paid through the clerk of the court in a county of 1,000,000 inhabitants or less, the order shall direct the obligor to pay to the clerk,

in addition to the maintenance payments, all fees imposed by the county board under paragraph (3) of subsection (u) of Section 27.1 of the Clerks of Courts Act. Unless paid in cash or pursuant to an order for withholding, the payment of the fee shall be by a separate instrument from the support payment and shall be made to the order of the Clerk.

9. 750 ILCS 5/510 provides:

(a) Except as otherwise provided in paragraph (f) of Section 502 and in subsection (b), clause (3) of Section 505.2, the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification. An order for child support may be modified as follows: (1) upon a showing of a substantial change in circumstances; and (2) without the necessity of showing a substantial change in circumstances, as follows: (A) upon a showing of an inconsistency of at least 20%, but no less than $10 per month, between the amount of the existing order and the amount of child support that results from application of the guidelines specified in Section 505 of this Act unless the inconsistency is due to the fact that the amount of the existing order resulted from a deviation from the guideline amount and there has not been a change in the

circumstances that resulted in that deviation; or (B) Upon a showing of a need to provide for the health care needs of the child under the order through health insurance or other means. In no event shall the eligibility for or receipt of medical assistance be considered to meet the need to provide for the child's health care needs. The provisions of subparagraph (a)(2)(A) shall apply only in cases in which a party is receiving child support enforcement services from the Illinois Department of Public Aid under Article X of the Illinois Public Aid Code, and only when at least 36 months have elapsed since the order for child support was entered or last modified. (a-5) An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504 and the following factors: (1) any change in the employment status of either party and whether the change has been made in good faith; (2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate; (3) any impairment of the present and future earning capacity of either party; (4) the tax consequences of the maintenance payments upon the respective economic circumstances of the parties; (5) the

duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage; (6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage and the present status of the property; (7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought; (8) the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage; and (9) any other factor that the court expressly finds to be just and equitable.

(b) The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this State.

(c) Unless otherwise agreed by the parties in a written agreement set forth in the judgment or otherwise approved by the court, the obligation to pay future maintenance is terminated upon the death of either party, or the remarriage of the party receiving maintenance, or if the party receiving maintenance cohabits with

another person on a resident, continuing conjugal basis.

(d) Unless otherwise provided in this Act, or as agreed in writing or expressly provided in the judgment, provisions for the support of a child are terminated by emancipation of the child, or if the child has attained the age of 18 and is still attending high school, provisions for the support of the child are terminated upon the date that the child graduates from high school or the date the child attains the age of 19, whichever is earlier, but not by the death of a parent obligated to support or educate the child. An existing obligation to pay for support or educational expenses, or both, is not terminated by the death of a parent. When a parent obligated to pay support or educational expenses, or both, dies, the amount of support or educational expenses, or both, may be enforced, modified, revoked or commuted to a lump sum payment, as equity may require, and that determination may be provided for at the time of the dissolution of the marriage or thereafter.

(e) The right to petition for support or educational expenses, or both, under Sections 505 and 513 is not extinguished by the death of a parent. Upon a petition filed before or after a parent's death, the court may award sums of money out of the decedent's estate for the child's support or educational expenses, or both, as equity

may require. The time within which a claim may be filed against the estate of a decedent under Sections 505 and 513 and subsection (d) and this subsection shall be governed by the provisions of the Probate Act of 1975, as a barrable, non-contingent claim.

(f) A petition to modify or terminate child support, custody, or visitation shall not delay any child support enforcement litigation or supplementary proceeding on behalf of the obligee, including, but not limited to, a petition for a rule to show cause, for non-wage garnishment, or for a restraining order.

10. The Fourth District Appellate Court in the case of In re: Marriage of Schweitzer, 289 Ill. App.3d 425, 682 N.E.2d 759 (4th Dist. 1997) holds that a marital settlement agreement which precludes modification precluded the modification of maintenance payments set forth in that agreement.

11. The Defendant has paid maintenance unto the Plaintiff since September 1997 through June 2004 for a total of 82 months as of the filing of this petition. During that time the Defendant has paid maintenance unto the Plaintiff in the sum of $123,000.00. The Defendant is current in the payments.

12. The Plaintiff was born on January 23, 1957 and has a life expectancy of 35 years as set forth in table 6, Life Tables for white females: United

States, 2001 as published by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System in the National Vital Statistics Reports, Vol. 52, No. 14 dated February 18, 2004.

13. The Defendant was born January 3, 1954 and has a life expectancy of 28.4 years as set forth in table 5, Life Tables for white males: United States, 2001 as published by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System in the National Vital Statistics Reports, Vol. 52, No. 14 dated February 18, 2004.

14. If the Defendant lives 28.4 more years he will be obligated to pay the Plaintiff 341 more months of maintenance which is the sum of $511,500.00 additional monies during his life time.

15. Upon the death of the Defendant the Plaintiff will still have a claim against the Defendant's estate for the maintenance payments for her then remaining life expectancy, which is the sum of $118,500.00, discounted to its then present value.

16. Maintenance payments are summarized as follows:

    a. $123,000.00 already paid as of June 2004;
    b. $511,500.00 to be paid during the Defendant's life;

c. $118,500.00 claim against Defendants estate (to be reduced to then present value).

17. The Plaintiff has a significant economic incentive to never remarry or cohabitate with another male on a continuing, conjugal basis.

18. That there has been a material change in circumstances since the entry of the Judgment of Dissolution of Marriage. The material changes occurred in the following manner:

    a. Plaintiff was employed only part-time at the time of the dissolution; and
    b. The Defendant is informed and believes, and, therefore, states that the Plaintiff is now employed full-time, has other part-time employment as well, and is earning substantially more money.

19. When a citizen owns the right to the income and profits from the labor of another citizen which is enforced by the threat of legal sanction or by the use of or threat of, coercion through the legal process, it is a condition of involuntary servitude.

20. When a debt owed by one citizen to another citizen which is based upon a contract is enforced by the criminal laws of the state, it constitutes a condition of peonage.

21. The State of Illinois has an elaborate system of laws the purpose of which is to force one adult citizen into a condition of involuntary servitude to

another adult citizen i.e. 750 ILCS 5/507, 507.1, 511, 516, 702, 705, 706.1 and 713.

22. That State of Illinois forces involuntary labor upon one citizen for the purpose assigning a portion of that labor to another adult citizen. 750 ILCS 5/505.1

23. That State of Illinois forces the employer of one adult citizen to assign a portion of the income derived from the labor of that citizen to be paid to another adult citizen. 750 ILCS 28/1 et seq.

24. It is a violation of the Criminal Laws of the State of Illinois to fail to pay maintenance to a former spouse when ordered to be paid by a court. 750 ILCS 16/1 et seq.

25. An obligation to pay maintenance to a former spouse is excepted from discharge under the United States Bankruptcy Code Title 11, Section 523 (a) (5).

26. The Defendant has no current relationship to the Plaintiff except that at one point in time he was once married to the Plaintiff.

27. The children of the parties are adults, emancipated and self-sustaining.

28. The Plaintiff is an able bodied woman fully capable of sustaining herself as any other citizen of the State of Illinois.

29. The Defendant is an able bodied man fully capable of sustaining himself as any other citizen of the State of Illinois.

30. The State of Illinois has no substantial or compelling interest in the Plaintiff greater than that of any other citizen of the state.

31. The State of Illinois has no substantial or compelling interest in the Defendant greater that of any other citizen of the state.

32. The State of Illinois has no substantial or compelling interest in the fact that the Plaintiff and the Defendant were at one time in the past married.

33. In this case the Defendants obligation to pay maintenance to the Plaintiff is:

    a. $1,500.00 per month;
    b. Continuing indefinitely until termination only by the Plaintiff's death, the Plaintiff's remarriage or the Plaintiff's cohabiting with another on a continuing, conjugal basis;
    c. Created by agreement of the parties;
    d. Non-modifiable by agreement of the parties;
    e. Non-modifiable by the order of Court in paragraph B of the Judgment of Dissolution of Marriage;
    f. Non-modifiable under the provisions of 750 ILCS 5/502 (f);
    g. Enforced by this Court under the provisions of 750 ILCS 5/502 (e).

h. Enforced by this Court under the provisions of 750 ILCS 5/507, 507.1, 511, 516, 702, 705, 706.1 and 713;
i. Enforced against the Defendant's employer under the provisions of 750 ILCS 28/1 et seq;
j. Enforced by the Criminal Laws of this state under the provisions of 750 ILCS 16/1 et seq; and
k. Exempted from Discharge under the United States Bankruptcy Code, Title 11, Section 523 (a) (5).

34. Supreme Court Rule 137 provides, in pertinent part:

> The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge; information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

35. Defendant files this petition in a good faith request for a change of existing laws.

Count I
(750 ILCS 5/504 is Null and Void)

1. -35. The Defendant reasserts and realleges paragraphs 1-35 as and for paragraphs 1-35 of this Count I.

36. An award of maintenance payable by one citizen to another citizen under the provisions of 750 ILCS 5/504 creates a condition of involuntary servitude.

37. The said condition of involuntary servitude violates the Constitution of the United States, Amendment XIII, Section 1.

Wherefore, the Defendant prays that this Court determine that 750 ILCS 5/504 is null and void as an unconstitutional violation of the constitution of the United States, Amendment XIII, Section 1 and terminate the award of maintenance in this cause.

Count II
(750 ILCS 5/502 (f) is Null and Void)

1. -35. The Defendant reasserts and realleges paragraphs1-35 as and for paragraphs 1-35 of this Count II.

36. An award of maintenance which is non-modifiable under the provisions of 750 ILCS 5/502 (f) creates a condition of involuntary servitude.

37. The said condition of involuntary servitude violates the Constitution of the United States, Amendment XIII, Section 1.

Wherefore, the Defendant prays that this Court determine that 750 ILCS 5/502 (f) is null and void as an unconstitutional violation of the constitution of the United States, Amendment XIII, Section 1 and terminate the award of maintenance in this cause.

Count III
(750 ILCS 5/502 (e), 750 ILCS 5/507, 507.1, 511, 516, 702, 706.1 and 713 ILCS are Null and Void)

1. -35. The Defendant reasserts and realleges paragraphs 1-35 as and for paragraphs 1-35 of this Count III.

36. Enforcement of a civil contractual debt from one citizen of this state to another citizen of this state through the use of legal sanction under the provisions of 750 ILCS 5/502 (e), 750 ILCS 5/507, 507.1, 511, 516, 702, 706.1 and 713 ILCS creates a condition of peonage.

37. The said condition of peonage violates the Constitution of the United States, Amendment XIII, Section 1.

Wherefore, the Defendant prays that this Court determine that 750 ILCS 5/502 (e), 750 ILCS 5/507, 507.1, 511, 516, 702, 706.1 and 713 ILCS is null and void as an unconstitutional violation of the constitution of the United States, Amendment XIII, Section 1 and terminate the award of maintenance in this cause.

Count IV
(750 ILCS 16/1 et seq is Null and Void)

1. -35. The Defendant reasserts and realleges paragraphs 1-35 as and for paragraphs 1-35 of this Count IV.

36. Forcing involuntary labor upon one adult citizen for the purpose of assigning a portion of that labor to another adult citizen under the provisions of 750 ILCS 5/505.1 creates a condition of involuntary servitude.

37. The said condition of peonage violates the Constitution of the United States, Amendment XIII, Section 1.

Wherefore, the Defendant prays that this Court determine that 750 ILCS 5/505.1 is null and void as an unconstitutional violation of the constitution of the United States, Amendment XIII, Section 1 and terminate the award of maintenance in this cause.

Count V
(750 ILCS 16/1 et seq is Null and Void)

1. -35. The Defendant reasserts and realleges paragraphs 1-35 as and for paragraphs 1-35 of this Count I.

36. An award of maintenance which is enforceable by the criminal laws of this state under 750 ILCS 16/1 et seq creates a condition of involuntary servitude and peonage.

37. The said condition of involuntary servitude and peonage violates the Constitution of the United States, Amendment XIII, Section 1.

Wherefore, the Defendant prays that this Court determine that 750 ILCS 16/1 et seq is null and void as an unconstitutional violation of the constitution of the United States, Amendment XIII, Section 1 and terminate the award of maintenance in this cause.

Count VI
(750 ILCS 28/1 et seq is Null and Void)

1. -35. The Defendant reasserts and realleges paragraphs 1-35 as and for paragraphs 1-35 of this Count V.

36. An award of maintenance which is enforceable against the Defendant's employer under the provisions of 750 ILCS 28/1 et seq creates a condition of involuntary servitude and peonage.

37. The said condition of involuntary servitude and peonage violates the Constitution of the United States, Amendment XIII, Section 1.

Wherefore, the Defendant prays that this Court determine that 750 ILCS 28/1 *et seq* is null and void as an unconstitutional violation of the constitution of the United States, Amendment XIII, Section 1 and terminate the award of maintenance in this cause.

Count VII
(which is non-modifiable and non-dischargeable in Bankruptcy is Null and Void)

1. -35 the Defendant reasserts and realleges paragraphs 1-35 as and for paragraphs 1-35 of this Count VI.

36. An award of maintenance which is neither modifiable nor dischargeable in Bankruptcy and which is enforceable by the criminal laws and legal sanctions of the State of Illinois creates a condition of involuntary servitude and peonage

37. The said condition of involuntary servitude and peonage violates the Constitution of the United States, Amendment XIII, Section 1.

Wherefore, the Defendant prays that this Court determine that an award of maintenance which is neither modifiable not dischargeable in Bankruptcy and which is enforceable by the criminal laws and legal sanctions of the State of Illinois creates a condition of involuntary servitude and peonage is null and void as an unconstitutional violation of the constitution of the United States, Amendment XIII, Section 1 and terminate the award of maintenance in this cause.

In the Alternative
Count VIII
(Maintenance is Modifiable)

1. -35 the Defendant reasserts and realleges paragraphs 1-35 as and for paragraphs 1-35 of this Count VII.

36. In this case paragraph No. 4 of the Marital Settlement Agreement is too remote and unrelated to paragraph No. 51 to preclude modification.

37. In this case it is equitable and just that the award of maintenance be modified.

Wherefore, the Defendant prays that this Court terminate or in the alternative reduce the award of maintenance to a reasonable sum.

In the Alternative
Court IX
(Maintenance is Modifiable)

1. -35 The Defendant reasserts and realleges paragraphs 1-35 as and for paragraphs 1-35 of this Court I.
36. In this case paragraph No. 51 of the Marital Settlement Agreement is unconscionable and should be stricken as void.

37. In this case it is equitable and just that the award of maintenance be modified.

Wherefore, the Defendant prays that this Court terminate or in the alternative reduce the award of maintenance to a reasonable sum.

ROBERT LEE BRUMFIELD,
Defendant

BY: FRANK H. BYERS, II, LTD.

BY: /s/ Frank H. Byers, II
FRANK H. BYERS, II

CERTIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Robert L. Brumfield
ROBERT LEE BRUMFIELD

PROOF OF SERVICE

Frank H. Byers, II, attorney for the Defendant in the above-entitled matter, hereby certifies that he did on the 10th day of June, 2004, mail by first class, United States Mail, postage fully prepaid, a copy of the above addressed to Robert Frederick, 129 W. Main, Urbana, IL 61801 and Cynthia Brumfield, 106 Timberview, Mahomet, IL 61853.

/s/ Frank H. Byers, II
FRANK H. BYERS, II

FRANK H. BYERS, II, LTD.
FRANK H. BYERS, II
Attorney-at-Law
3795 N. Woodford, Suite 100
P.O. Box 2227
Decatur, IL 62524-2227
Telephone: (217) 875-3301
mljc:\marital\work\brumfield.ptm

Appendix G

In the Circuit Court for the Sixth Judicial Circuit
Champaign County, Illinois

In re: the Marriage of	)	
	)	
Cynthia J. Brumfield,	)	
Petitioner,	)	
	)	**No. 97-D-529**
vs.	)	
	)	
Robert L. Brumfield,	)	
Respondent.	)	

RESPONSE TO PETITION TO TERMINATE MAINTENANCE OR, IN THE ALTERNATIVE, TO MODIFY MAINTENANCE

Filed
Sixth Judicial Circuit
July 20, 2004
Linda S. Frank
Clerk of the Circuit Court
Champaign County, Illinois

Now comes the plaintiff, Cynthia J. Brumfield, by her attorney, Robert G. Frederick, and for her Response to the Petition to Terminate Maintenance, or in the Alternative, to Modify Maintenance, states:

1. She admits the allegations of paragraph 1 of the petition.

2. She admits the allegations of paragraph 2 of the petition.

3. She admits the allegations of paragraph 3 of the petition.

4. She admits the allegations of paragraph 4 of the petition.

5. She admits the allegations of paragraph 5 of the petition.

6. She admits the allegations of paragraph 6 of the petition.

7. She admits the allegations of paragraph 7 of the petition.

8. She admits the allegations of paragraph 8 of the petition.

9. She admits the allegations of paragraph 9 of the petition.

10. She admits the allegations of paragraph 10 of the petition.

11. She admits the allegations of paragraph 11 of the petition.

12. She admits the allegations of paragraph 12 of the petition.

13. She admits the allegations of paragraph 13 of the petition.

14. She denies the allegations of paragraph 14 of the petition and states affirmatively the amount is $511,200.00.

15. She denies the allegations of paragraph 15 of the petition and states affirmatively the maintenance would be paid until plaintiff dies.

16. She admits that defendant has summarized his figuring of maintenance.

17. She denies the allegations of paragraph 17 of the petition and states affirmatively that prior to the judgment being entered she told defendant she would most likely always remain single thereafter.

18. Plaintiff moves to strike the allegations of paragraph 18 of the petition as they are irrelevant and immaterial to the issues before the court as maintenance was agreed to be non-modifiable. She denies the allegations of paragraph 18 of the petition as they are not relevant.

19. She denies the allegations of paragraph 19 of the petition.

20. She denies the allegations of paragraph 20 of the petition.

21. She denies the allegations of paragraph 21 of the petition.

22. She denies the allegations of paragraph 22 of the petition.

23. She denies the allegations of paragraph 23 of the petition.

24. She admits the allegations of paragraph 24 of the petition.

25. She admits the allegations of paragraph 25 of the petition.

26. She denies the allegations of paragraph 26 of the petition and states affirmatively they were married for 21 years and they have a relationship based on a court order dissolving their marriage which was entered into by a Marital Settlement Agreement where both parties were represented by their own legal counsel.

27. She admits the allegations of paragraph 27 of the petition.

28. She admits she is an able-bodied woman but denies she is fully capable of sustaining herself in the lifestyle she would have had if the marriage had not been dissolved as she stayed home to raise the kids while defendant had a career.

29. She admits the allegations of paragraph 29 of the petition.

30. She denies the allegations of paragraph 30 of the petition.

31. She denies the allegations of paragraph 31 of the petition.

32. She denies the allegations of paragraph 32 of the petition.

33. She admits the allegations of paragraph 33 of the petition.

34. She admits the allegations of paragraph 34 of the petition.

35. She has insufficient information to either admit or deny the allegations of paragraph 35 of the petition and demands strict proof thereof.

Count I

1. through 35. Plaintiff reasserts and realleges her response to paragraphs 1 through 35 as and for her response to paragraphs 1 through 35 of Count I of the petition.

36. She denies the allegations of paragraph 36 of Count I of the petition.

37. She denies the allegations of paragraph 37 of Count I of the petition.

Wherefore, plaintiff prays that the court deny and dismiss Count I of the petition at cost of defendant and that defendant be ordered to pay plaintiff's attorney's fees.

Count II

1. through 37. Plaintiff reasserts and realleges her response to paragraphs 1 through 37 of Count I as and for her response to paragraphs 1 through 37 of Count II of the petition.

Wherefore, plaintiff prays that the court deny and dismiss Count II of the petition at cost of defendant and that defendant be ordered to pay plaintiff's attorney's fees.

Count III

1. through 35. Plaintiff reasserts and realleges her response to paragraphs 1 trough 35 as and for her response to paragraphs 1 through 35 of Count III of the petition.

36. She denies the allegations of paragraph 36 of Count III of the petition.

37. She denies the allegations of paragraph 37 of Count III of the petition.

Wherefore, plaintiff prays that the court deny and dismiss Count III of the petition at cost of defendant and that defendant be ordered to pay plaintiff's attorney's fees.

Count IV

1. through 35. Plaintiff reasserts and realleges her response to paragraphs 1 through 35 as and for her response to paragraphs 1 through 35 of Count IV of the petition.

36. She denies the allegations of paragraph 36 of Count IV of the petition.

37. She denies the allegations of paragraph 37 of Count IV of the petition.

Wherefore, plaintiff prays that the court deny and dismiss Count IV of the petition at cost of defendant and that defendant be ordered to pay plaintiff's attorney's fees.

Count V

1. through 35. Plaintiff reasserts and realleges her response to paragraphs 1 through 35 as and for her response to paragraphs 1 through 35 of Count V of the petition.

36. She denies the allegations of paragraph 36 of Count V of the petition.

37. She denies the allegations of paragraph 37 of Count V of the petition.

Wherefore, plaintiff prays that the court deny and dismiss Count V of the petition at cost of defendant and that defendant be ordered to pay plaintiff's attorney's fees.

Count VI

1. through 35. Plaintiff reasserts and realleges her response to paragraphs 1 through 35 as and for her response to paragraphs 1 through 35 of Count VI of the petition.

36. She denies the allegations of paragraphs 36 of Count VI of the petition.

37. She denies the allegations of paragraph 37 of Count VI of the petition.

Wherefore, plaintiff prays that the court deny and dismiss Count VI of the petition at cost of defendant and that defendant be ordered to pay plaintiff's attorney's fees.

Count VII

1. through 35. Plaintiff reasserts and realleges her response to paragraphs 1 through 35 as and for her response to paragraphs 1 through 35 of Count VII of the petition.

36. She denies the allegations of paragraph 36 of Count VII of the petition.

37. She denies the allegations of paragraph 37 of Count VII of the petition.

Wherefore, plaintiff prays that the court deny and dismiss Count VII of the petition at cost of defendant and that defendant be ordered to pay plaintiff's attorney's fees.

Count VIII

1. through 35. Plaintiff reasserts and realleges her response to paragraphs 1 through 35 as and for her response to paragraphs 1 through 35 of Count VIII of the petition.

36. She denies the allegations of paragraph 36 of Count VIII of the petition.

37. She denies the allegations of paragraph 37 of Count VIII of the petition.

Wherefore, plaintiff prays that the court deny and dismiss Count VIII of the petition at cost of defendant and that defendant be ordered to pay plaintiff's attorney's fees.

Court IX

1. through 35. Plaintiff reasserts and realleges her response to paragraphs 1 through 35 as and for her response to paragraphs 1 through 35 of Count IX of the petition.

36. She denies the allegations of paragraph 36 of Count IX of the petition.

37. She denies the allegations of paragraph 37 of Count IX of the petition.

Wherefore, plaintiff prays that the court deny and dismiss Count VIII of the petition at cost of defendant and that defendant be ordered to pay plaintiff's attorney's fees.

_____
Cynthia J. Brumfield, Plaintiff

/s/ Robert G. Frederick
Robert G. Frederick, Attorney for Plaintiff

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth herein are true and correct, except as to matters stated wherein plaintiff has insufficient knowledge to admit or deny and as to such, the undersigned certifies that she verily believes she had insufficient information to form a belief.

/s/ Cynthia J. Brumfield
Cynthia J. Brumfield

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause by enclosing the same in an envelope addressed to their address as disclosed by the pleading of record herein, with postage fully prepaid and by depositing said envelope in a U.S. Post Office mail box in Urbana, Illinois, on the 20th day of July, 2004.

/s/ Suellen Reeder

Frederick & Hagle
Attorneys for Plaintiff
129 W Main
Urbana, IL 61801
Tel: 217/367-6092

Appendix H

In the Circuit Court for the Sixth Judicial Circuit
Champaign County, Illinois

In re: the Marriage of	)	
	)	
Cynthia J. Brumfield,	)	
Petitioner,	)	
	)	**No. 97-D-529**
vs.	)	
	)	
Robert L. Brumfield,	)	
Respondent.	)	

MOTION FOR SUMMARY JUDGMENT

Filed
Sixth Judicial Circuit
September 22, 2004
Linda S. Frank
Clerk of the Circuit Court
Champaign County, Illinois

Now comes the petitioner, Cynthia J. Brumfield, by her attorney, Robert G. Frederick, and moves for summary judgment as to the respondent's Petition to Terminate Maintenance, or in the Alternative, to Modify Maintenance and, in support thereof, states:

1. That the Judgment of Dissolution of Marriage was entered in this cause on August 29, 1997.

2. That respondent, Robert L. Brumfield, was represented by legal counsel in this dissolution.

3. That paragraph 4 of the parties Marital Settlement Agreement states:

> That Husband shall pay to Wife the sum of $1,500.00 per month as and for the maintenance of Wife. This maintenance shall be terminated upon Wife's remarriage, Wife's death, or Wife cohabitating with another on a continuing conjugal basis.

4. That there are no allegations in respondent's petition that petitioner has remarried, died or cohabited with another on a continuing conjugal basis.

5. That paragraph 51 of the Marital Settlement Agreement states: "This agreement is non-modifiable except those provisions regarding custody, visitation and child support."

6. That the Fourth District Appellate Court in *In Re Marriage of Schweitzer*, 289 Ill.App.3d 425 held: " . . that the parties may agree that maintenance shall not be modified or terminated except upon certain specified conditions. When the parties so agree, maintenance may be modified or terminated only under the circumstances specified in the agreement."

7. That the parties' intent to preclude or limit modification of maintenance is clearly set forth in the parties' Marital Settlement Agreement.

8. That petitioner, Cynthia J. Brumfield, is entitled to a judgment as a matter of law.

9. That judgment should be entered in favor of the petitioner Cynthia J. Brumfield, and against the respondent, Robert L. Brumfield, on respondent's petition to terminate maintenance, or in the alternative to modify maintenance.

Wherefore, petitioner Cynthia J. Brumfield, prays the court enter summary judgment in her favor on respondent's petition.

Cynthia J. Brumfield, Petitioner

By: /s/ Robert G. Frederick
Robert G. Frederick

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause by enclosing the same in an envelope addressed to their address as disclosed by the pleading of record herein, with postage fully prepaid and by depositing said envelope in a U.S. Post Office mail box in Urbana, Illinois, on the 21st day of September, 2004.

/s/ Suellen Reeder

Frederick & Hagle
Attorneys for Plaintiff
129 W Main
Urbana, IL 61801
Tel: 217/367-6092

Appendix I

In the Circuit Court for the Sixth Judicial Circuit
Champaign County, Illinois

In re: the Marriage of	)	
	)	
Cynthia J. Brumfield,	)	
Petitioner,	)	
	)	**No. 97-D-529**
vs.	)	
	)	
Robert L. Brumfield,	)	
Respondent.	)	

RESPONSE TO MOTION FOR SUMMARY JUDGMENT AND MOTION FOR SUMMARY JUDGMENT

Filed
Sixth Judicial Circuit
October 12, 2004
Linda S. Frank
Clerk of the Circuit Court
Champaign County, Illinois

Robert Lee Brumfield, Respondent for his response to the Motion for Summary Judgment, filed by the Petitioner, Cynthia J. Brumfield, and for his Motion for Summary Judgment states:

Response for the Motion for Summary Judgment

1. Paragraph number four (4) of the Marital Settlement Agreement is too remote and

unrelated to paragraph number fifty-one (51) to preclude modification.

2. It is equitable and just that the award of maintenance be modified.

3. The discovery deposition of Cynthia J. Brumfield is filed concurrently herewith and by reference incorporated herein.

4. The discovery deposition of Robert Lee Brumfield is filed concurrently herewith and by reference incorporated herein.

5. That Defendant's exhibits one (1) through twelve (12) identified in the said depositions filed concurrently herewith, which are exhibits are filed concurrently herewith also, are by reference incorporated herein.

6. Paragraph number fifty-one (51) of the Marital Settlement Agreement is unconscionable and should be stricken as void.

7. Genuine issues of material fact concerning the income, expenses, assets and debts of Cynthia J. Brumfield and Robert Lee Brumfield exist.

Wherefore, the Defendant response to the Motion for Summary Judgment requesting that it be denied and that the award of maintenance in this cause be terminated or in the alternative be reduced to a reasonable sum.

Motion for Summary Judgment

1. An award of maintenance payable by one citizen to another citizen under the provisions of 750 ILCS 5/504 creates a condition of involuntary servitude.

2. The said condition of involuntary servitude violates the Constitution of the United States, Amendment XIII, Section 1.

3. An award of maintenance which is non-modifiable under the provisions of 750 ILCS 5/502 (f) creates a condition of involuntary servitude.

4. The said condition of involuntary servitude violates the Constitution of the United States, Amendment XIII, Section 1.

5. Enforcement of a civil contractual debt from one citizen of this state to another citizen of this state through the use of legal sanction under the provisions of 750 ILCS 5/502 (e), 750 ILCS 5/507, 507.1, 511, 516, 702, 706.1 and 713 ILCS creates a condition of peonage.

6. The said condition of peonage violates the Constitution of the United States, Amendment XIII, Section 1.

7. Forcing involuntary labor upon one adult citizen for the purpose of assigning a portion of that labor to another adult citizen under the provisions of 750 ILCS 5/505.1 creates a condition of involuntary servitude.

8. The said condition of involuntary servitude violates the Constitution of the United States, Amendment XIII, Section 1.

9. An award of maintenance which is enforceable by the criminal laws of this state under 750 ILCS 16/1 et seq creates a condition of involuntary servitude and peonage.

10. The said condition of involuntary servitude and peonage violates the Constitution of the United States, Amendment XIII, Section 1.

11. An award of maintenance which is enforceable against the Defendant's employer under the provisions of 750 ILCS 28/1, *et seq*, creates a condition of involuntary servitude and peonage.

12. The said condition of involuntary servitude and peonage violates the Constitution of the United States, Amendment XIII, Section 1.

13. An award of maintenance which is neither modifiable nor dischargeable in Bankruptcy and which is enforceable by the criminal laws and legal sanctions of the State of Illinois creates a condition of involuntary servitude and peonage.

14. The said condition of involuntary servitude and peonage violates the Constitution of the United States, Amendment XIII, Section 1.

Wherefore, the Defendant prays that this Court determine an award of maintenance which is neither modifiable nor dischargeable in bankruptcy and which is enforceable by the

criminal laws and legal sanctions of the State of Illinois creates a condition of involuntary servitude and peonage and is null and void as a unconstitutional violation of the Constitution of the United States, Amendment 13, Section 1, and terminate the award of maintenance in this cause.

Robert Lee Brumfield, Defendant

By: Frank H. Byers, II, Ltd.

By: /s/ Frank H. Byers, II
Frank H. Byers, II

PROOF OF SERVICE

Frank H. Byers, II, attorney for the Defendant in the above-entitled matter, hereby certifies that he did cause the hand delivery on the 12th day of October, 2004, of a copy of the above to Robert Frederick, Frederick & Hagle, 129 W. Main Urbana, IL 61801.

/s/ Frank H. Byers, II
FRANK H. BYERS, II

FRANK H. BYERS, II, LTD.
FRANK H. BYERS, II
Attorney-at-Law
3795 N. Woodford St., Suite 100
P.O. Box 2227
Decatur, IL 62524
Telephone: (217) 875-3301
mljc:\marital\work\brumfield.rtm

Appendix J

In the Circuit Court for the Sixth Judicial Circuit
Champaign County, Illinois

In re: the Marriage of	)	
	)	
Cynthia J. Brumfield,	)	
	)	
Petitioner,	)	
	)	**No. 97-D-529**
vs.	)	
	)	
Robert L. Brumfield,	)	
	)	
Respondent.	)	

RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Filed
Sixth Judicial Circuit
October 14, 2004
Linda S. Frank
Clerk of the Circuit Court
Champaign County, Illinois

Now comes the petitioner, Cynthia J. Brumfield, by her attorney, Robert G. Frederick, and for her Response to the Respondent's Motion for Summary Judgment, states:

1. She denies the allegations of paragraph 1 of the motion.

2. She denies the allegations of paragraph 2 of the motion.

3. She denies the allegations of paragraph 3 of the motion.

4. She denies the allegations of paragraph 4 of the motion.

5. She denies the allegations of paragraph 5 of the motion.

6. She denies the allegations of paragraph 6 of the motion.

7. She denies the allegations of paragraph 7 of the motion.

8. She denies the allegations of paragraph 8 of the motion.

9. She denies the allegations of paragraph 9 of the motion.

10. She denies the allegations of paragraph 10 of the motion.

11. She denies the allegations of paragraph 11 of the motion.

12. She denies the allegations of paragraph 12 of the motion.

13. She denies the allegations of paragraph 13 of the motion.

14. She denies the allegations of paragraph 14 of the motion.

15. That respondent was represented by counsel when he entered into the Marital Settlement Agreement in this case.

16. That attached hereto and made a part hereof is the discovery deposition of respondent.

17. That attached hereto and made a part hereof is the discovery deposition of petitioner.

18. That the Fourth District Appellate Court in *In Re Marriage of Schweitzer*, 289 Ill.App.3d, 425, upheld the fact that parties can agree on when maintenance can be terminated or modified and set specific circumstances.

19. That respondent is an able-bodied working man.

20. The fact that respondent agreed to pay maintenance and was ordered to pay maintenance pursuant to his agreement does not constituted involuntary servitude or peonage.

21. That the courts of Illinois have been awarding maintenance for more than 100 years. *Dinet v. Eigenmann*, (1875), 80 Il 274.

22. That 750 ILCS 5/502(F) states: "Except for terms concerning support, custody or visitation of children the judgment may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides . . ."

23. Statutory limitations on modification of terms set forth in the Judgment of Dissolution of Marriage

allow parties to the dissolution to maximize benefits of future planning and eliminate uncertainties arising from the fear of future motions to increase or decrease a parties' obligations. *In Re Marriage of Adamson and Cosner*, (1999), 308 Ill.App.3d 759, 731.

Wherefore, petitioner prays the respondent's motion for summary judgment be denied.

/s/ Robert G. Frederick
Robert G. Frederick, Attorney for Petitioner

State of Illinois)
) ss.
County of Champaign)

Cynthia J. Brumfield being first duly sworn on her oath deposes and states that she has read the above and foregoing Response to Respondent's Motion for Summary Judgment, that she is the petitioner therein, and that the same is true and correct.

/s/ Cynthia J. Brumfield
Cynthia J. Brumfield

Subscribed and sworn to before me this 13th day of October, 2004.

/s/ Robert G. Frederick
Notary Public

Official Seal
Robert G. Frederick
Notary Public, State of Illinois
My Commission Expires 9/9/08

Frederick & Hagle
Attorneys for Petitioner
129 W. Main
Urbana, IL 61801
Tel: 217/367-6092

Appendix K

11 U.S.C. § 523 Exceptions to Discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt —

(1) for a tax or a customs duty —

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required —

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by —

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing —

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C)(i) for purposes of subparagraph (A) —

(I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be non-dischargeable; and

(II) cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be non-dischargeable; and

(ii) for purposes of this subparagraph —

(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and

(II) the term "luxury goods or services" does not include goods or services reasonably necessary for the

support or maintenance of the debtor or a dependent of the debtor.

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit —

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) for a domestic support obligation;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty —

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition,

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for —

(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository

institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;

(13) for any payment of an order of restitution issued under title 18, United States Code;

(14) incurred to pay a tax to the United States that would be non-dischargeable pursuant to paragraph (1);

(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

(14B) incurred to pay fines or penalties imposed under Federal election law;

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association

with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915 (h) of title 28 (or a similar non-Federal law);

(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under —

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title; but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal

Revenue Code of 1986 constitutes a claim or a debt under this title; or

(19) that —

(A) is for —

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(B) results, before, on, or after the date on which the petition was filed, from —

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable non-bankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or

similar State or local law, or a written stipulation to a judgment or a final order entered by a non-bankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965, or under section 733(g) of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating

agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

Appendix L

750 ILCS 5/502 (from Ch. 40, par. 502)

Sec. 502. Agreement. (a) To promote amicable settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into a written or oral agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them and support, custody and visitation of their children.

(b) The terms of the agreement, except those providing for the support, custody and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable.

(c) If the court finds the agreement unconscionable, it may request the parties to submit a revised agreement or upon hearing, may make orders for the disposition of property, maintenance, child support and other matters.

(d) Unless the agreement provides to the contrary, its terms shall be set forth in the judgment, and the parties shall be ordered to perform under such terms, or if the agreement provides that its terms shall not be set forth in the judgment, the judgment shall identify the agreement and state that the court has approved its terms.

(e) Terms of the agreement set forth in the judgment are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(f) Except for terms concerning the support, custody or visitation of children, the judgment may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment.

Appendix M

750 ILCS 5/504 (from Ch. 40, par. 504)

Sec. 504. Maintenance.

(a) In a proceeding for dissolution of marriage or legal separation or declaration of invalidity of marriage, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for fixed or indefinite periods of time, and the maintenance may be paid from the income or property of the other spouse after consideration of all relevant factors, including:

(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the

custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable.

(b) (Blank).

(b-5) Any maintenance obligation including any unallocated maintenance and child support obligation, or any portion of any support obligation, that becomes due and remains unpaid shall accrue simple interest as set forth in Section 505 of this Act.

(b-7) Any new or existing maintenance order including any unallocated maintenance and child support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder. Each such judgment to be in the amount of each payment or installment of support and each such judgment to

be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order, except no judgment shall arise as to any installment coming due after the termination of maintenance as provided by Section 510 of the Illinois Marriage and Dissolution of Marriage Act or the provisions of any order for maintenance. Each such judgment shall have the full force, effect and attributes of any other judgment of this State, including the ability to be enforced. A lien arises by operation of law against the real and personal property of the obligor for each installment of overdue support owed by the obligor.

(c) The court may grant and enforce the payment of maintenance during the pendency of an appeal as the court shall deem reasonable and proper.

(d) No maintenance shall accrue during the period in which a party is imprisoned for failure to comply with the court's order for the payment of such maintenance.

(e) When maintenance is to be paid through the clerk of the court in a county of 1,000,000 inhabitants or less, the order shall direct the obligor to pay to the clerk, in addition to the maintenance payments, all fees imposed by the county board under paragraph (3) of subsection (u) of Section 27.1 of the Clerks of Courts Act. Unless paid in cash or pursuant to an order for withholding, the payment of the fee shall be by a separate instrument from the support payment and shall be made to the order of the Clerk.

Appendix N

750 ILCS 5/505.1 (from Ch. 40, par. 505.1)

Sec. 505.1.

(a) Whenever it is determined in a proceeding to establish or enforce a child support or maintenance obligation that the person owing a duty of support is unemployed, the court may order the person to seek employment and report periodically to the court with a diary, listing or other memorandum of his or her efforts in accordance with such order. Additionally, the court may order the unemployed person to report to the Department of Employment Security for job search services or to make application with the local Job Training Partnership Act provider for participation in job search, training or work programs and where the duty of support is owed to a child receiving child support enforcement services under Article X of the Illinois Public Aid Code, as amended, the court may order the unemployed person to report to the Illinois Department of Public Aid for participation in job search, training or work programs established under Section 9-6 and Article IXA of that Code.

(b) Whenever it is determined that a person owes past-due support for a child or for a child and the parent with whom the child is living, and the child is receiving assistance under the Illinois Public Aid Code, the court shall order at the request of the Illinois Department of Public Aid:

(1) that the person pay the past-due support in accordance with a plan approved by the court; or

(2) if the person owing past-due support is unemployed, is subject to such a plan, and is not incapacitated, that the

person participate in such job search, training, or work programs established under Section 9-6 and Article IXA of the Illinois Public Aid Code as the court deems appropriate.

Appendix O

750 ILCS 5/507 (from Ch. 40, par. 507)

Sec. 507. Payment of maintenance or support to court.

(a) In actions instituted under this Act, the court shall order that maintenance and support payments be made to the clerk of court as trustee for remittance to the person entitled to receive the payments. However, the court in its discretion may direct otherwise where circumstances so warrant.

(b) The clerk of court shall maintain records listing the amount of payments, the date payments are required to be made and the names and addresses of the parties affected by the order. For those cases in which support is payable to the clerk of the circuit court for transmittal to the Illinois Department of Public Aid by order of the court or upon notification of the Illinois Department of Public Aid, and the Illinois Department of Public Aid collects support by assignment, offset, withholding, deduction or other process permitted by law, the Illinois Department shall notify the clerk of the date and amount of such collection. Upon notification, the clerk shall record the collection on the payment record for the case.

(c) The parties affected by the order shall inform the clerk of court of any change of address or of other condition that may affect the administration of the order.

(d) The provisions of this Section shall not apply to cases that come under the provisions of Sections 709 through 712.

(e) To the extent the provisions of this Section are inconsistent with the requirements pertaining to the State Disbursement Unit under Section 507.1 of this Act and

Section 10-26 of the Illinois Public Aid Code, the requirements pertaining to the State Disbursement Unit shall apply.

Appendix P

750 ILCS 5/507.1

Sec. 507.1. Payment of Support to State Disbursement Unit.

(a) As used in this Section: "Order for support", "obligor", "obligee", and "payor" mean those terms as defined in the Income Withholding for Support Act, except that "order for support" shall not mean orders providing for spousal maintenance under which there is no child support obligation.

(b) Notwithstanding any other provision of this Act to the contrary, each order for support entered or modified on or after October 1, 1999 shall require that support payments be made to the State Disbursement Unit established under Section 10-26 of the Illinois Public Aid Code if:

(1) a party to the order is receiving child support enforcement services under Article X of the Illinois Public Aid Code; or

(2) no party to the order is receiving child support enforcement services, but the support payments are made through income withholding.

(c) Support payments shall be made to the State Disbursement Unit if:

(1) the order for support was entered before October 1, 1999, and a party to the order is receiving child support enforcement services under Article X of the Illinois Public Aid Code; or

(2) no party to the order is receiving child support enforcement services, and the support payments are being made through income withholding.

(c-5) If no party to the order is receiving child support enforcement services under Article X of the Illinois Public Aid Code, and the support payments are not made through income withholding, then support payments shall be made as directed by the order for support.

(c-10) At any time, and notwithstanding the existence of an order directing payments to be made elsewhere, the Department of Public Aid may provide notice to the obligor and, where applicable, to the obligor's payor:

(1) to make support payments to the State Disbursement Unit if:

(A) a party to the order for support is receiving child support enforcement services under Article X of the Illinois Public Aid Code; or

(B) no party to the order for support is receiving child support enforcement services under Article X of the Illinois Public Aid Code, but the support payments are made through income withholding; or

(2) to make support payments to the State Disbursement Unit of another state upon request of another state's Title IV-D child support enforcement agency, in accordance with the requirements of Title IV, Part D of the Social Security Act and regulations promulgated under that Part D.

The Department of Public Aid shall provide a copy of the notice to the obligee and to the clerk of the circuit court.

(c-15) Within 15 days after the effective date of this amendatory Act of the 91st General Assembly, the clerk of the circuit court shall provide written notice to the obligor to make payments directly to the clerk of the circuit court if no party to the order is receiving child support enforcement services under Article X of the Illinois Public Aid Code, the support payments are not made through income withholding, and the order for support requires support payments to be made directly to the clerk of the circuit court. The clerk shall provide a copy of the notice to the obligee.

(c-20) If the State Disbursement Unit receives a support payment that was not appropriately made to the Unit under this Section, the Unit shall immediately return the payment to the sender, including, if possible, instructions detailing where to send the support payment.

(d) The notices under subsections (c-10) and (c-15) may be sent by ordinary mail, certified mail, return receipt requested, facsimile transmission, or other electronic process, or may be served upon the obligor or payor using any method provided by law for service of a summons.

Appendix Q

750 ILCS 5/508 (from Ch. 40, par. 508)

Sec. 508. Attorney's Fees; Client's Rights and Responsibilities Respecting Fees and Costs.

(a) The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. Interim attorney's fees and costs may be awarded from the opposing party, in accordance with subsection (c-1) of Section 501. At the conclusion of the case, contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503. Fees and costs may be awarded to counsel from a former client in accordance with subsection (c) of this Section. Awards may be made in connection with the following:

(1) The maintenance or defense of any proceeding under this Act.

(2) The enforcement or modification of any order or judgment under this Act.

(3) The defense of an appeal of any order or judgment under this Act, including the defense of appeals of post-judgment orders.

(3.1) The prosecution of any claim on appeal (if the prosecuting party has substantially prevailed).

(4) The maintenance or defense of a petition brought under Section 2-1401 of the Code of Civil Procedure seeking relief from a final order or judgment under this Act.

(5) The costs and legal services of an attorney rendered in preparation of the commencement of the proceeding brought under this Act.

(6) Ancillary litigation incident to, or reasonably connected with, a proceeding under this Act.

The court may order that the award of attorney's fees and costs (including an interim or contribution award) shall be paid directly to the attorney, who may enforce the order in his or her name, or that it shall be paid to the appropriate party. Judgment may be entered and enforcement had accordingly. Except as otherwise provided in subdivision (e)(1) of this Section, subsection (c) of this Section is exclusive as to the right of any counsel (or former counsel) of record to petition a court for an award and judgment for final fees and costs during the pendency of a proceeding under this Act.

(b) In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party. If non-compliance is with respect to a discovery order, the non-compliance is presumptively without compelling cause or justification, and the presumption may only be rebutted by clear and convincing evidence. If at any time a court finds that a hearing under this Section was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary

delay, or other acts needlessly increasing the cost of litigation.

Appendix R

750 ILCS 5/509 (from Ch. 40, par. 509)

Sec. 509. Independence of Provisions of Judgment or Temporary Order.) If a party fails to comply with a provision of a judgment, order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

Appendix S

750 ILCS 5/510 (from Ch. 40, par. 510)

Sec. 510. Modification and termination of provisions for maintenance, support, educational expenses, and property disposition.

(a) Except as otherwise provided in paragraph (f) of Section 502 and in subsection (b), clause (3) of Section 505.2, the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification. An order for child support may be modified as follows:

(1) upon a showing of a substantial change in circumstances; and

(2) without the necessity of showing a substantial change in circumstances, as follows:

(A) upon a showing of an inconsistency of at least 20%, but no less than $10 per month, between the amount of the existing order and the amount of child support that results from application of the guidelines specified in Section 505 of this Act unless the inconsistency is due to the fact that the amount of the existing order resulted from a deviation from the guideline amount and there has not been a change in the circumstances that resulted in that deviation; or

(B) Upon a showing of a need to provide for the health care needs of the child under the order through health insurance or other means. In no event shall the eligibility for or receipt of medical assistance be considered to meet the need to provide for the child's health care needs.

The provisions of subparagraph (a)(2)(A) shall apply only in cases in which a party is receiving child support enforcement services from the Illinois Department of Public Aid under Article X of the Illinois Public Aid Code, and only when at least 36 months have elapsed since the order for child support was entered or last modified.

(a-5) An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504 and the following factors:

(1) any change in the employment status of either party and whether the change has been made in good faith;

(2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate;

(3) any impairment of the present and future earning capacity of either party;

(4) the tax consequences of the maintenance payments upon the respective economic circumstances of the parties;

(5) the duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage;

(6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage and the present status of the property;

(7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought;

(8) the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage; and

(9) any other factor that the court expressly finds to be just and equitable.

(b) The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this State.

(c) Unless otherwise agreed by the parties in a written agreement set forth in the judgment or otherwise approved by the court, the obligation to pay future maintenance is terminated upon the death of either party, or the remarriage of the party receiving maintenance, or if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis.

(d) Unless otherwise provided in this Act, or as agreed in writing or expressly provided in the judgment, provisions for the support of a child are terminated by emancipation of the child, or if the child has attained the age of 18 and is still attending high school, provisions for the support of the child are terminated upon the date that the child graduates from high school or the date the child attains the age of 19, whichever is earlier, but not by the death of a parent obligated to support or educate the child. An existing obligation to pay for support or educational expenses, or

both, is not terminated by the death of a parent. When a parent obligated to pay support or educational expenses, or both, dies, the amount of support or educational expenses, or both, may be enforced, modified, revoked or commuted to a lump sum payment, as equity may require, and that determination may be provided for at the time of the dissolution of the marriage or thereafter.

(e) The right to petition for support or educational expenses, or both, under Sections 505 and 513 is not extinguished by the death of a parent. Upon a petition filed before or after a parent's death, the court may award sums of money out of the decedent's estate for the child's support or educational expenses, or both, as equity may require. The time within which a claim may be filed against the estate of a decedent under Sections 505 and 513 and subsection (d) and this subsection shall be governed by the provisions of the Probate Act of 1975, as a barrable, non-contingent claim.

(f) A petition to modify or terminate child support, custody, or visitation shall not delay any child support enforcement litigation or supplementary proceeding on behalf of the obligee, including, but not limited to, a petition for a rule to show cause, for non-wage garnishment, or for a restraining order.

Appendix T

750 ILCS 5/511 (from Ch. 40, par. 511)

Sec. 511. Procedure. A judgment of dissolution or of legal separation or of declaration of invalidity of marriage may be enforced or modified by order of court pursuant to petition.

(a) Any judgment entered within this State may be enforced or modified in the judicial circuit wherein such judgment was entered or last modified by the filing of a petition with notice mailed to the respondent at his last known address, or by the issuance of summons to the respondent. If neither party continues to reside in the county wherein such judgment was entered or last modified, the court on the motion of either party or on its own motion may transfer a post-judgment proceeding, including a proceeding under the Income Withholding for Support Act, to another county or judicial circuit, as appropriate, where either party resides. If the post-judgment proceeding is with respect to maintenance or support, any such transfer shall be to the county or judicial circuit wherein the recipient or proposed recipient of such maintenance or support resides.

(b) In any post-judgment proceeding to enforce or modify in one judicial circuit the judgment of another judicial circuit of this State, the moving party shall commence the proceeding by filing a petition establishing the judgment and attaching a copy of the judgment as a part of the petition.

The parties shall continue to be designated as in the original proceeding. Notice of the filing of the petition shall be mailed to the clerk of the court wherein the judgment was entered and last modified in the same manner as notice is

mailed when registering a foreign judgment. Summons shall be served as provided by law.

(c) In any post-judgment proceeding to enforce or modify the judgment of another state, the moving party shall commence the proceeding by filing a petition to enroll that judgment, attaching a copy thereof as a part of the petition and proceed as provided for in paragraph (b) hereof.

(d) In any post-judgment proceeding to enforce a judgment or order for payment of maintenance or support, including a proceeding under the Income Withholding for Support Act, where the terms of such judgment or order provide that payments of such maintenance or support are to be made to the clerk of the court and where neither party continues to reside in the county wherein such judgment or order was entered or last modified, the court on the motion of either party or on its own motion may transfer the collection of the maintenance or support to the clerk of the court in another county or judicial circuit, as appropriate, wherein the recipient of the maintenance or support payments resides.

Appendix U

750 ILCS 5/516 (from Ch. 40, par. 516)

Sec. 516. Public Aid collection fee. In all cases instituted by the Illinois Department of Public Aid on behalf of a child or spouse, other than one receiving a grant of financial aid under Article IV of The Illinois Public Aid Code, on whose behalf an application has been made and approved for child support enforcement services as provided by Section 10-1 of that Code, the court shall impose a collection fee on the individual who owes a child or spouse support obligation in an amount equal to 10% of the amount so owed as long as such collection is required by federal law, which fee shall be in addition to the support obligation. The imposition of such fee shall be in accordance with provisions of Title IV, Part D, of the Social Security Act and regulations duly promulgated thereunder. The fee shall be payable to the clerk of the circuit court for transmittal to the Illinois Department of Public Aid and shall continue until child support enforcement services are terminated by that Department.

Appendix V

750 ILCS 5/702 (from Ch. 40, par. 702)

Sec. 702. Maintenance in Case of Bigamy. When a dissolution of marriage is granted to a person who shall, in good faith, have intermarried with a person having at the time of such marriage, another spouse or spouses living, the court may, nevertheless, allow the petitioner maintenance in the same manner as in other cases of dissolution of marriage; but no such allowance shall be made as will be inconsistent with the rights of such other spouse or spouses, which shall first be ascertained by the court before the granting of such maintenance.

Appendix W

750 ILCS 5/705 (from Ch. 40, par. 705)

Sec. 705. Support payments; receiving and disbursing agents.

(1) The provisions of this Section shall apply, except as provided in Sections 709 through 712.

(2) In a dissolution of marriage action filed in a county of less than 3 million population in which an order or judgment for child support is entered, and in supplementary proceedings in any such county to enforce or vary the terms of such order or judgment arising out of an action for dissolution of marriage filed in such county, the court, except as it otherwise orders, under subsection (4) of this Section, may direct that child support payments be made to the clerk of the court.

(3) In a dissolution of marriage action filed in any county of 3 million or more population in which an order or judgment for child support is entered, and in supplementary proceedings in any such county to enforce or vary the terms of such order or judgment arising out of an action for dissolution of marriage filed in such county, the court, except as it otherwise orders under subsection (4) of this Section, may direct that child support payments be made either to the clerk of the court or to the Court Service Division of the County Department of Public Aid. After the effective date of this Act, the court, except as it otherwise orders under subsection (4) of this Section, may direct that child support payments be made either to the clerk of the court or to the Illinois Department of Public Aid.

(4) In a dissolution of marriage action or supplementary proceedings involving maintenance or child support payments, or both, to persons who are recipients of aid under the Illinois Public Aid Code, the court shall direct that such payments be made to (a) the Illinois Department of Public Aid if the persons are recipients under Articles III, IV, or V of the Code, or (b) the local governmental unit responsible for their support if they are recipients under Articles VI or VII of the Code. In accordance with federal law and regulations, the Illinois Department of Public Aid may continue to collect current maintenance payments or child support payments, or both, after those persons cease to receive public assistance and until termination of services under Article X of the Illinois Public Aid Code. The Illinois Department of Public Aid shall pay the net amount collected to those persons after deducting any costs incurred in making the collection or any collection fee from the amount of any recovery made.

The order shall permit the Illinois Department of Public Aid or the local governmental unit, as the case may be, to direct that payments be made directly to the former spouse, the children, or both, or to some person or agency in their behalf, upon removal of the former spouse or children from the public aid rolls or upon termination of services under Article X of the Illinois Public Aid Code; and upon such direction, the Illinois Department or local governmental unit, as the case requires, shall give notice of such action to the court in writing or by electronic transmission.

(5) All clerks of the court and the Court Service Division of a County Department of Public Aid and, after the effective date of this Act, all clerks of the court and the Illinois Department of Public Aid, receiving child support payments under subsections (2) and (3) of this Section shall disburse the payments to the person or persons entitled thereto under

the terms of the order or judgment. They shall establish and maintain current records of all moneys received and disbursed and of defaults and delinquencies in required payments. The court, by order or rule, shall make provision for the carrying out of these duties.

Payments under this Section to the Illinois Department of Public Aid pursuant to the Child Support Enforcement Program established by Title IV-D of the Social Security Act shall be paid into the Child Support Enforcement Trust Fund. All payments under this Section to the Illinois Department of Human Services shall be deposited in the DHS Recoveries Trust Fund. Disbursements from these funds shall be as provided in the Illinois Public Aid Code.

Payments received by a local governmental unit shall be deposited in that unit's General Assistance Fund. Any order of court directing payment of child support to a clerk of court or the Court Service Division of a County Department of Public Aid, which order has been entered on or after August 14, 1961, and prior to the effective date of this Act, may be amended by the court in line with this Act; and orders involving payments of maintenance or child support to recipients of public aid may in like manner be amended to conform to this Act.

(6) No filing fee or costs will be required in any action brought at the request of the Illinois Department o Public Aid in any proceeding under this Act. However, any such fees or costs may be assessed by the court against the respondent in the court's order of support or any modification thereof in a proceeding under this Act.

(7) For those cases in which child support is payable to the clerk of the circuit court for transmittal to the Illinois Department of Public Aid by order of court or upon

notification by the Illinois Department of Public Aid, the clerk shall transmit all such payments, within 4 working days of receipt, to insure that funds are available for immediate distribution by the Department to the person or entity entitled thereto in accordance with standards of the Child Support Enforcement Program established under Title IV-D of the Social Security Act.

The clerk shall notify the Department of the date of receipt and amount thereof at the time of transmittal. Where the clerk has entered into an agreement of cooperation with the Department to record the terms of child support orders and payments made thereunder directly into the Department's automated data processing system, the clerk shall account for, transmit and otherwise distribute child support payments in accordance with such agreement in lieu of the requirements contained herein.

In any action filed in a county with a population of 1,000,000 or less, the court shall assess against the respondent in any order of maintenance or child support any sum up to $36 annually authorized by ordinance of the county board to be collected by the clerk of the court as costs for administering the collection and disbursement of maintenance and child support payments. Such sum shall be in addition to and separate from amounts ordered to be paid as maintenance or child support.

(8) To the extent the provisions of this Section are inconsistent with the requirements pertaining to the State Disbursement Unit under Section 507.1 of this Act and Section 10-26 of the Illinois Public Aid Code, the requirements pertaining to the State Disbursement Unit shall apply.

Appendix X

750 ILCS 5/706.1 (from Ch. 40, par. 706.1)

Sec. 706.1. Withholding of Income to Secure Payment of Support. Orders for support entered under this Act are subject to the Income Withholding for Support Act.

Appendix Y

750 ILCS 5/713 (from Ch. 40, par. 713)

Sec. 713. Attachment of the Body. As used in this Section, "obligor" has the same meaning ascribed to such term in the Income Withholding for Support Act.

(a) In any proceeding to enforce an order for support, where the obligor has failed to appear in court pursuant to order of court and after due notice thereof, the court may enter an order for the attachment of the body of the obligor. Notices under this Section shall be served upon the obligor by any means authorized under subsection (a-5) of Section 505. The attachment order shall fix an amount of escrow which is equal to a minimum of 20% of the total child support arrearage alleged by the obligee in sworn testimony to be due and owing. The attachment order shall direct the Sheriff of any county in Illinois to take the obligor into custody and shall set the number of days following release from custody for a hearing to be held at which the obligor must appear, if he is released under subsection (b) of this Section.

(b) If the obligor is taken into custody, the Sheriff shall take the obligor before the court which entered the attachment order. However, the Sheriff may release the person after he or she has deposited the amount of escrow ordered by the court pursuant to local procedures for the posting of bond. The Sheriff shall advise the obligor of the hearing date at which the obligor is required to appear.

(c) Any escrow deposited pursuant to this Section shall be transmitted to the Clerk of the Circuit Court for the county in which the order for attachment of the body of the obligor was entered. Any Clerk who receives money

deposited into escrow pursuant to this Section shall notify the obligee, public office or legal counsel whose name appears on the attachment order of the court date at which the obligor is required to appear and the amount deposited into escrow. The Clerk shall disburse such money to the obligee only under an order from the court that entered the attachment order pursuant to this Section.

(d) Whenever an obligor is taken before the court by the Sheriff, or appears in court after the court has ordered the attachment of his body, the court shall:

(1) hold a hearing on the complaint or petition that gave rise to the attachment order. For purposes of determining arrearages that are due and owing by the obligor, the court shall accept the previous sworn testimony of the obligee as true and the appearance of the obligee shall not be required. The court shall require sworn testimony of the obligor as to his or her Social Security number, income, employment, bank accounts, property and any other assets. If there is a dispute as to the total amount of arrearages, the court shall proceed as in any other case as to the undisputed amounts; and

(2) order the Clerk of the Circuit Court to disburse to the obligee or public office money held in escrow pursuant to this Section if the court finds that the amount of arrearages exceeds the amount of the escrow. Amounts received by the obligee or public office shall be deducted from the amount of the arrearages.

(e) If the obligor fails to appear in court after being notified of the court date by the Sheriff upon release from custody, the court shall order any monies deposited into escrow to be immediately released to the obligee or public office and shall proceed under subsection (a) of this Section

by entering another order for the attachment of the body of the obligor.

(f) This Section shall apply to any order for support issued under the "Illinois Marriage and Dissolution of Marriage Act", approved September 22, 1977, as amended; the "Illinois Parentage Act of 1984", effective July 1, 1985, as amended; the "Revised Uniform Reciprocal Enforcement of Support Act", approved August 28, 1969, as amended; "The Illinois Public Aid Code", approved April 11, 1967, as amended; the Non-Support Punishment Act; and the "Non-support of Spouse and Children Act", approved June 8, 1953, as amended.

(g) Any escrow established pursuant to this Section for the purpose of providing support shall not be subject to fees collected by the Clerk of the Circuit Court for any other escrow.

Appendix Z

750 ILCS 16/15

Sec. 15. Failure to support.

(a) A person commits the offense of failure to support when he or she:

(1) willfully, without any lawful excuse, refuses to provide for the support or maintenance of his or her spouse, with the knowledge that the spouse is in need of such support or maintenance, or, without lawful excuse, deserts or willfully refuses to provide for the support or maintenance of his or her child or children in need of support or maintenance and the person has the ability to provide the support; or

(2) willfully fails to pay a support obligation required under a court or administrative order for support, if the obligation has remained unpaid for a period longer than 6 months, or is in arrears in an amount greater than $5,000, and the person has the ability to provide the support; or

(3) leaves the State with the intent to evade a support obligation required under a court or administrative order for support, if the obligation, regardless of when it accrued, has remained unpaid for a period longer than 6 months, or is in arrears in an amount greater than $10,000; or

(4) willfully fails to pay a support obligation required under a court or administrative order for support, if the obligation has remained unpaid for a period longer than one year, or is in arrears in an amount greater than $20,000, and the person has the ability to provide the support.

(a-5) Presumption of ability to pay support. The existence of a court or administrative order of support that was not based on a default judgment and was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period.

(b) Sentence. A person convicted of a first offense under subdivision (a)(1) or (a)(2) is guilty of a Class A misdemeanor. A person convicted of an offense under subdivision (a)(3) or (a)(4) or a second or subsequent offense under subdivision (a)(1) or (a)(2) is guilty of a Class 4 felony.

(c) Expungement. A person convicted of a first offense under subdivision (a)(1) or (a)(2) who is eligible for the Earnfare program, shall, in lieu of the sentence prescribed in subsection (b), be referred to the Earnfare program. Upon certification of completion of the Earnfare program, the conviction shall be expunged. If the person fails to successfully complete the Earnfare program, he or she shall be sentenced in accordance with subsection (b).

(d) Fine. Sentences of imprisonment and fines for offenses committed under this Act shall be as provided under Articles 8 and 9 of Chapter V of the Unified Code of Corrections, except that the court shall order restitution of all unpaid support payments and may impose the following fines, alone, or in addition to a sentence of imprisonment under the following circumstances:

(1) from $1,000 to $5,000 if the support obligation has remained unpaid for a period longer than 2 years, or is in arrears in an amount greater than $1,000 and not exceeding $10,000;

(2) from $5,000 to $10,000 if the support obligation has remained unpaid for a period longer than 5 years, or is in arrears in an amount greater than $10,000 and not exceeding $20,000; or

(3) from $10,000 to $25,000 if the support obligation has remained unpaid for a period longer than 8 years, or is arrears in an amount greater than $20,000.

(e) Restitution shall be ordered in an amount equal to the total unpaid support obligation as it existed at the time of sentencing. Any amounts paid by the obligor shall be allocated first to current support and then to restitution ordered and then to fines imposed under this Section.

(f) For purposes of this Act, the term "child" shall have the meaning ascribed to it in Section 505 of the Illinois Marriage and Dissolution of Marriage Act.

Appendix AA

750 ILCS 16/50

Sec. 50. Community service; work alternative program.

(a) In addition to any other penalties imposed against an offender under this Act, the court may order the offender to perform community service for not less than 30 and not more than 120 hours per month, if community service is available in the jurisdiction and is funded and approved by the county board of the county where the offense was committed. In addition, whenever any person is placed on supervision for committing an offense under this Act, the supervision shall be conditioned on the performance of the community service.

(b) In addition to any other penalties imposed against an offender under this Act, the court may sentence the offender to service in a work alternative program administered by the sheriff. The conditions of the program are that the offender obtain or retain employment and participate in a work alternative program administered by the sheriff during non-working hours. A person may not be required to participate in a work alternative program under this subsection if the person is currently participating in a work program pursuant to another provision of this Act, Section 10-11.1 of the Illinois Public Aid Code, Section 505.1 of the Illinois Marriage and Dissolution of Marriage Act, or Section 15.1 of the Illinois Parentage Act of 1984.

(c) In addition to any other penalties imposed against an offender under this Act, the court may order, in cases where the offender has been in violation of this Act for 90 days or more, that the offender's Illinois driving privileges be

suspended until the court determines that the offender is in compliance with this Act.

The court may determine that the offender is in compliance with this Act if the offender has agreed (i) to pay all required amounts of support and maintenance as determined by the court or (ii) to the garnishment of his or her income for the purpose of paying those amounts.

The court may also order that the offender be issued a family financial responsibility driving permit that would allow limited driving privileges for employment and medical purposes in accordance with Section 7-702.1 of the Illinois Vehicle Code. The clerk of the circuit court shall certify the order suspending the driving privileges of the offender or granting the issuance of a family financial responsibility driving permit to the Secretary of State on forms prescribed by the Secretary. Upon receipt of the authenticated documents, the Secretary of State shall suspend the offender's driving privileges until further order of the court and shall, if ordered by the court, subject to the provisions of Section 7-702.1 of the Illinois Vehicle Code, issue a family financial responsibility driving permit to the offender.

(d) If the court determines that the offender has been in violation of this Act for more than 60 days, the court may determine whether the offender has applied for or been issued a professional license by the Department of Professional Regulation or another licensing agency. If the court determines that the offender has applied for or been issued such a license, the court may certify to the Department of Professional Regulation or other licensing agency that the offender has been in violation of this Act for more than 60 days so that the Department or other agency may take appropriate steps with respect to the license or application as provided in Section 10-65 of the Illinois

Administrative Procedure Act and Section 2105-15 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois. The court may take the actions required under this subsection in addition to imposing any other penalty authorized under this Act.

Appendix BB

750 ILCS 16/60

Sec. 60. Unemployed persons owing duty of support.

(a) Whenever it is determined in a proceeding to establish or enforce a child support or maintenance obligation that the person owing a duty of support is unemployed, the court may order the person to seek employment and report periodically to the court with a diary, listing or other memorandum of his or her efforts in accordance with such order. Additionally, the court may order the unemployed person to report to the Department of Employment Security for job search services or to make application with the local Job Training Partnership Act provider for participation in job search, training, or work programs and where the duty of support is owed to a child receiving child support enforcement services under Article X of the Illinois Public Aid Code the court may order the unemployed person to report to the Illinois Department of Public Aid for participation in job search, training, or work programs established under Section 9-6 and Article IXA of that Code.

(b) Whenever it is determined that a person owes past due support for a child or for a child and the parent with whom the child is living, and the child is receiving assistance under the Illinois Public Aid Code, the court shall order at the request of the Illinois Department of Public Aid:

(1) that the person pay the past-due support in accordance with a plan approved by the court; or

(2) if the person owing past-due support is unemployed, is subject to such a plan, and is not incapacitated, that the

person participate in such job search, training, or work programs established under Section 9-6 and Article IXA of the Illinois Public Aid Code as the court deems appropriate.

Appendix CC

750 ILCS 28/20

Sec. 20. Entry of order for support containing income withholding provisions; income withholding notice.

(a) In addition to any content required under other laws, every order for support entered on or after July 1, 1997, shall:

(1) Require an income withholding notice to be prepared and served immediately upon any payor of the obligor by the obligee or public office, unless a written agreement is reached between and signed by both parties providing for an alternative arrangement, approved and entered into the record by the court, which ensures payment of support. In that case, the order for support shall provide that an income withholding notice is to be prepared and served only if the obligor becomes delinquent in paying the order for support; and

(2) Contain a dollar amount to be paid until payment in full of any delinquency that accrues after entry of the order for support. The amount for payment of delinquency shall not be less than 20% of the total of the current support amount and the amount to be paid periodically for payment of any arrearage stated in the order for support; and

(3) Include the obligor's Social Security Number, which the obligor shall disclose to the court. If the obligor is not a United States citizen, the obligor shall disclose to the court, and the court shall include in the order for support, the obligor's alien registration number, passport number, and home country's social security or national health number, if applicable.

(b) At the time the order for support is entered, the Clerk of the Circuit Court shall provide a copy of the order to the obligor and shall make copies available to the obligee and public office.

(c) The income withholding notice shall:

(1) be in the standard format prescribed by the federal Department of Health and Human Services; and

(1.1) state the date of entry of the order for support upon which the income withholding notice is based; and

(2) direct any payor to withhold the dollar amount required for current support under the order for support; and

(3) direct any payor to withhold the dollar amount required to be paid periodically under the order for support for payment of the amount of any arrearage stated in the order for support; and

(4) direct any payor or labor union or trade union to enroll a child as a beneficiary of a health insurance plan and withhold or cause to be withheld, if applicable, any required premiums; and

(5) state the amount of the payor income withholding fee specified under this Section; and

(6) state that the amount actually withheld from the obligor's income for support and other purposes, including the payor withholding fee specified under this Section, may not be in excess of the maximum amount permitted under the federal Consumer Credit Protection Act; and

(7) state the duties of the payor and the fines and penalties for failure to withhold and pay over income and for discharging, disciplining, refusing to hire, or otherwise penalizing the obligor because of the duty to withhold and pay over income under this Section; and

(8) state the rights, remedies, and duties of the obligor under this Section; and

(9) include the Social Security number of the obligor; and

(10) include the date that withholding for current support terminates, which shall be the date of termination of the current support obligation set forth in the order for support; and

(11) contain the signature of the obligee or the printed name and telephone number of the authorized representative of the public office, except that the failure to contain the signature of the obligee or the printed name and telephone number of the authorized representative of the public office shall not affect the validity of the income withholding notice; and

(12) direct any payor to pay over amounts withheld for payment of support to the State Disbursement Unit.

(d) The accrual of a delinquency as a condition for service of an income withholding notice, under the exception to immediate withholding in subsection (a) of this Section, shall apply only to the initial service of an income withholding notice on a payor of the obligor.

(e) Notwithstanding the exception to immediate withholding contained in subsection (a) of this Section, if the

court finds at the time of any hearing that an arrearage has accrued, the court shall order immediate service of an income withholding notice upon the payor.

(f) If the order for support, under the exception to immediate withholding contained in subsection (a) of this Section, provides that an income withholding notice is to be prepared and served only if the obligor becomes delinquent in paying the order for support, the obligor may execute a written waiver of that condition and request immediate service on the payor.

(g) The obligee or public office may serve the income withholding notice on the payor or its superintendent, manager, or other agent by ordinary mail or certified mail return receipt requested, by facsimile transmission or other electronic means, by personal delivery, or by any method provided by law for service of a summons. At the time of service on the payor and as notice that withholding has commenced, the obligee or public office shall serve a copy of the income withholding notice on the obligor by ordinary mail addressed to his or her last known address. A copy of the income withholding notice together with proofs of service on the payor and the obligor shall be filed with the Clerk of the Circuit Court.

(h) At any time after the initial service of an income withholding notice, any other payor of the obligor may be served with the same income withholding notice without further notice to the obligor. A copy of the income withholding notice together with a proof of service on the other payor shall be filed with the Clerk of the Circuit Court.

(i) New service of an income withholding notice is not required in order to resume withholding of income in the case of an obligor with respect to whom an income

withholding notice was previously served on the payor if withholding of income was terminated because of an interruption in the obligor's employment of less than 180 days.

Appendix DD

750 ILCS 28/35

Sec. 35. Duties of payor.

(a) It shall be the duty of any payor who has been served with an income withholding notice to deduct and pay over income as provided in this Section. The payor shall deduct the amount designated in the income withholding notice, as supplemented by any notice provided pursuant to subsection (f) of Section 45, beginning no later than the next payment of income which is payable or creditable to the obligor that occurs 14 days following the date the income withholding notice was mailed, sent by facsimile or other electronic means, or placed for personal delivery to or service on the payor. The payor may combine all amounts withheld for the benefit of an obligee or public office into a single payment and transmit the payment with a listing of obligors from whom withholding has been effected. The payor shall pay the amount withheld to the State Disbursement Unit within 7 business days after the date the amount would (but for the duty to withhold income) have been paid or credited to the obligor. If the payor knowingly fails to withhold the amount designated in the income withholding notice or to pay any amount withheld to the State Disbursement Unit within 7 business days after the date the amount would have been paid or credited to the obligor, then the payor shall pay a penalty of $100 for each day that the amount designated in the income withholding notice (whether or not withheld by the payor) is not paid to the State Disbursement Unit after the period of 7 business days has expired. The failure of a payor, on more than one occasion, to pay amounts withheld to the State Disbursement Unit within 7 business days after the date the amount would have been paid or credited to the obligor creates a presumption that the payor knowingly

failed to pay over the amounts. This penalty may be collected in a civil action which may be brought against the payor in favor of the obligee or public office. A finding of a payor's nonperformance within the time required under this Act must be documented by a certified mail return receipt showing the date the income withholding notice was served on the payor.

For purposes of this Act, a withheld amount shall be considered paid by a payor on the date it is mailed by the payor, or on the date an electronic funds transfer of the amount has been initiated by the payor, or on the date delivery of the amount has been initiated by the payor. For each deduction, the payor shall provide the State Disbursement Unit, at the time of transmittal, with the date the amount would (but for the duty to withhold income) have been paid or credited to the obligor.

After June 30, 2000, every payor that has 250 or more employees shall use electronic funds transfer to pay all amounts withheld under this Section. During the year 2001 and during each year thereafter, every payor that has fewer than 250 employees and that withheld income under this Section pursuant to 10 or more income withholding notices during December of the preceding year shall use electronic funds transfer to pay all amounts withheld under this Section.

Upon receipt of an income withholding notice requiring that a minor child be named as a beneficiary of a health insurance plan available through an employer or labor union or trade union, the employer or labor union or trade union shall immediately enroll the minor child as a beneficiary in the health insurance plan designated by the income withholding notice. The employer shall withhold any required premiums and pay over any amounts so withheld

and any additional amounts the employer pays to the insurance carrier in a timely manner. The employer or labor union or trade union shall mail to the obligee, within 15 days of enrollment or upon request, notice of the date of coverage, information on the dependent coverage plan, and all forms necessary to obtain reimbursement for covered health expenses, such as would be made available to a new employee. When an order for dependent coverage is in effect and the insurance coverage is terminated or changed for any reason, the employer or labor union or trade union shall notify the obligee within 10 days of the termination or change date along with notice of conversion privileges.

For withholding of income, the payor shall be entitled to receive a fee not to exceed $5 per month to be taken from the income to be paid to the obligor.

(b) Whenever the obligor is no longer receiving income from the payor, the payor shall return a copy of the income withholding notice to the obligee or public office and shall provide information for the purpose of enforcing this Act.

(c) Withholding of income under this Act shall be made without regard to any prior or subsequent garnishments, attachments, wage assignments, or any other claims of creditors. Withholding of income under this Act shall not be in excess of the maximum amounts permitted under the federal Consumer Credit Protection Act. Income available for withholding shall be applied first to the current support obligation, then to any premium required for employer, labor union, or trade union-related health insurance coverage ordered under the order for support, and then to payments required on past-due support obligations. If there is insufficient available income remaining to pay the full amount of the required health insurance premium after withholding of income for the current support obligation,

then the remaining available income shall be applied to payments required on past-due support obligations. If the payor has been served with more than one income withholding notice pertaining to the same obligor, the payor shall allocate income available for withholding on a proportionate share basis, giving priority to current support payments. A payor who complies with an income withholding notice that is regular on its face shall not be subject to civil liability with respect to any individual, any agency, or any creditor of the obligor for conduct in compliance with the notice.

(d) No payor shall discharge, discipline, refuse to hire or otherwise penalize any obligor because of the duty to withhold income.